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Separate paging is given to this Part in order that it may be filed as a separate compilation.


## PART III—SECTION 1

### Notifications issued by the High Courts, the Comptroller and Auditor General, the Union Public Service Commission, the Indian Government Railways, and by Attached and Subordinate Offices of the Government of India.

### MINISTRY OF HOME AFFAIRS

**Intelligence Bureau**

NOTIFICATIONS

*New Delhi-3, the 3rd September* 1951

**No. 25/Est/50(12).**—Major Harphool Singh, Deputy Central Intelligence Officer, Subsidiary Intelligence Bureau, Amritsar, was granted 59 days annual leave from 23rd May 1951 to 21st July 51 with permission to affix 22nd July 1951 (Sunday).

He returned to the same post on the expiry of his leave.

*New Delhi-2, the 6th September* 1951

**No. 7/Ests/48(64).**—Mr. K. S Gopalakrishnan, Administrative Officer, in this Bureau, has been granted leave on average pay for four months with effect from 28th August, 1951 (F.N.).

Mr. R. N. Bahadur, a permanent Superintendent in the Bureau, has been appointed to officiate as Administrative Officer, with effect from 3rd September 1951 (F.N.) *vice* Mr. K. S. Gopalakrishnan granted leave.

T. R. SUBHEDAR,
*Deputy Director (E.).*

### DEPARTMENT OF EXPLOSIVES

NOTIFICATION

*New Delhi, the 5th September* 1951

**No. G-15(21)3.**—The lien of Shri Narendra Singh, B.Sc., on the permanent post of Assistant Inspector of Explosives held by him in this Department is terminated with effect from 1st July 1948.

M. K. MAITRA,
*Chief Inspector of Explosives in India.*

### MINISTRY OF DEFENCE

**Directorate General, Ordnance Factories**

NOTIFICATIONS

*Calcutta, the 31st August* 1951

**No. 62/51/G.**—Mr. J. L. Saha, offg. T.S.O., Dte. Genl., Ord. Fys., is granted earned leave for 7 days, 26th July, 1951.

**No. 63/51/G.**—Mr. S. Ranganathan, offg. O.S., Dte. Genl., Ord. Fys., is granted earned leave for 12 days, 26th July 1951.

*The 4th September* 1951

**No. 101/51/E.**—Mr. Amar Chand, Offg. W. M., Clothing Factory, Shahjahanpur, was granted privilege leave for 4 days, 4th June, 1951.

**No. 102/51/E.**—Mr. G. R. Narasimhan, A.W.M., under training, Gun Carriage Factory, Jubbulpore, was granted earned leave for 41 days, 4th June, 1951, with permission to prefix and affix Sundays, 3rd June and 15th July, 1951, respectively, to his leave.

**No. 103/51/E.**—Mr. B. N. Basu, A.W.M., under training, Gun, Carriage Factory, Jubbulpore, was granted earned leave for 16 days, 4th June 1951, with permission to prefix Sunday, 3rd June 1951, to his leave.

K. K. FRAMJI,
*Director General, Ordnance Factories.*

### MINISTRY OF LABOUR

**Regional Directorate of Resettlement and Employment**

NOTIFICATIONS

*Lucknow, the 3rd September* 1951

**No. 0302/92/8566.**—Sri Basant Kumar, Assistant Employment Officer, Gorakhpur, was granted 5 days earned leave from May 31 to June 4, 1951 (both days inclusive).

**No. 0302/12/8567.**—Sri R. L. Misra, Officiating Sub-regional Employment Officer, Jhansi, under orders of transfer as Officiating Deputy Regional Employment Officer, Kanpur, has been granted 13 days earned leave from July 9, to July 21, 1951 (both days inclusive) with permission to prefix Sunday July, 8, 1951 and to suffix Sunday July 22, 1951.

RADHA KANT,
*Regional Director.*

**Office of the Chief Labour Commissioner**

*New Delhi, the 3rd September* 1951

**No. CLC.14(179)/Adm.**—Shri R. P. Bartaria, Labour Inspector (Central), Allahabad was transferred to Ajmer with effect from the forenoon of 9th August, 1951 where he took over charge on the forenoon of 23rd August, 1951.

**No. CLC.14(179)/Adm.**—Shri M. R. Raju, Labour Inspector (Central), Secunderabad-II, was transferred to Vizagapatam with effect from the afternoon of 9th August 1951 where he took over charge on the forenoon of 18th August, 1951.

*The 5th September* 1951

**No. CLC-14(179)/Adm.**—(1) Shri B. S. Dubey, Labour Inspector (Central), Ranchi, was transferred to Patna-II, with effect from the forenoon of 1st August 1951 where he took over charge on the forenoon of 9th August 1951.

(2) On relief by Shri B. S. Dubey, Shri K. P. Sinha, Labour Inspector (Central) Patna-II, was transferred to Kodarma, where he took over charge on the forenoon of 17th August 1951.

(3) Shri H. H. Quraishi, Labour Inspector (Central), Muzaffarpur, was transferred to Bermo, with effect from the afternoon of 14th August 1951 where he took over charge on the forenoon of 24th August, 1951.

*The 8th September* 1951

**No. CLC-14(179)/Adm.**—Shri Shiv Lal, Labour Inspector (Central), Jullundur, was transferred to Ambala, with effect from the afternoon of 18th July 1951, where he took over charge on the afternoon of 26th July 1951.

L. C. JAIN, *I.C.S.*,
*Chief Labour Commissioner.*

## LABOUR APPELLATE TRIBUNAL OF INDIA

NOTIFICATION

*Calcutta the 28th August* 1951

**No. LA.6(2)/3105.**—The following decisions of the Calcutta Bench of the Tribunal are published for general information :—

1. Appeal No. 47 of 1950.
2. Appeal No. 116 of 1950.
3. Appeal No. 100 of 1950.
4. Appeal No. 132 of 1950.
5. Appeal No. 104 of 1950.
6. Appeal No. Cal-34 of 1950.
7. Appeal No. 141 of 1950.

J. N. MAJUMDAR,
*Labour Appellate Tribunal of India.*

Appeal No. 47 of 1950

Calcutta Silk Manufacturing Co. Ltd. — Appellants

*versus*

Calcutta Silk Manufacturing Mazdoor Union — Respondents.

In the matter of an appeal against the award of Shri G. Palit, Judge, Industrial Tribunal, Calcutta, dated the 27th March 1950 in respect of an industrial dispute between the above parties (Published in the Calcutta Gazette, dated 20th April, 1950).

*Calcutta, the 20th January*, 1951

*Present* :

Mr. J. N. Majumdar, Chairman.
R. C. Mitter, Kt., Member.
Mr. G. P. Mathur, Member.

*Appearances.*

For the Appellants.
Mr. A. K. Bhattacharjee, Advocate.

For the Respondents.
Mr. P. K. Sanyal, Advocate.

*State.*—West Bengal.
*Industry.*—Textile (Silk).

DECISION

1. On the 6th September, 1949, the Company gave a notice of lockout and thereafter discharged its employees *en bloc*. This gave rise to an industrial dispute, which was referred by the West Bengal Government to an Industrial Tribunal for adjudication under Section 10 of the Industrial Disputes Act, XIV of 1947 (hereafter referred to as the 1947 Act). The Tribunal made its award in due course. That award was published by the West Bengal Government under Section 17 of the said Act on the 20th April, 1950 along with an order made on 10th April 1950, under section 15(2) read with Section 19(3) The order runs as follows :—

> "The award made by the said Sri G. Palit, District Judge, shall bind the Company and its workmen aforesaid as specified therein and shall remain in force for a period of one year with effect from the date of its publication."

The Company preferred this appeal against that award. The memorandum of appeal was sent by registered post to the office of the Appellate Tribunal at Bombay on the 2nd September, 1950 and was received there on the 6th September following. According to the rules framed by the Central Government the date of presentation of the memorandum of appeal must be taken to the 6th September, 1950, when the memorandum was received at the Bombay office.

2. The respondent has raised a preliminary objection as to the competency of the appeal. That objection has been based on two grounds, namely,—

(i) that the Industrial Disputes (Appellate Tribunal) Act, XLVIII of 1950 (hereafter called the Appellate Tribunals Act), by which the right of appeal was for the first time conferred, is not applicable to the case ; and

(ii) even if it is, the delay in presenting the memorandum of appeal should not be condoned by us.

3. If we could have held the Appellate Tribunals Act to be applicable, we would have condoned the delay in the exercise of our powers under Section 10(2) of that Act on the facts of this case. Those facts are as follows :—

On the date of the publication of the award the Appellate Tribunals Act had not been passed, and though it came into force on the 20th May, 1950, that is to say, just within thirty days of the publication of the award, the Appellate Tribunal was not constituted till the 8th August, 1950, on which date also the rules prescribed for filing appeals were published in India Gazette. Accordingly, the Company moved the Calcutta High Court for a writ *certiorari* on the 30th June, 1950. A rule was issued by the said High Court which remained pending till the 28th August, 1950, on which date it was discharged. The Company posted the memorandum of appeal to Bombay on the 2nd September, 1950, that is to say, within five days of the final order of the High Court on the rule.

4. The question that remains to be considered is whether the Company can invoke the provisions of Section 7 of the Appellate Tribunals Act.

5. The Appellate Tribunals Act received the assent of the President on the 20th May, 1950. From the dates, which we have mentioned above, it would appear that the West Bengal Government made the order hereinbefore recited under Section 15(2) of the 1947 Act, before the Appellate Tribunals Act was enacted. The 1947 Act was amended by the Appellate Tribunal Act in some respects. By those amendments, sub-sections (2) to (4) of Section 15 of the said Act were repealed.

6. The relevant portion of Section 15(2) reads as follows :—

> "On receipt of such award the appropriate government shall by order in writing declare the award to be binding."

Section 15(4) lays down "Save as provided in the proviso to sub-section 3 of Section 19, the award declared to be binding under this section shall not be called in question in any manner." No question arises in this case under the proviso to Section 15(2) or of sub-section 3 of Section 19 which are not, therefore, necessary to be recited.

7. The award was made binding by the government order, as mentioned above, from the date of its publication, namely, 20th April, 1950, and, as such, fell just within the period of limitation as prescribed in Section 10(1) of the Appellate Tribunals Act. Therefore, if the Appellate Tribunals Act had not been enacted or sections 15(2) and 15(4) of the 1947 Act had not been repealed, the rights of the parties, which had become crystalised and made final by that award, would have been binding on the parties and could not have been questioned in any manner. The question, therefore, that arises now for our consideration in deciding the preliminary objection is the effect of the repeal of the said Sections 15(2) and 15(4) of the 1947 Act.

8. Section 6 of the General Clauses Act (Act X of 1897) provides that "unless a different intention appears a repeal of any enactment shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder." The right of appeal was conferred on the 20th May, 1950, when the Appellate Tribunals Act came into force. Therefore, the benefit of the right so conferred could not be availed of, unless a different intention appeared from the Appellate Tribunals Act by giving retrospective operation to the provisions. The principle on the point was laid down by the Judicial Committee of the Privy Council in Delhi Cloth and General Mills Co. Ltd. *Vs.* The Income-Tax Commission, LR 64, I.A. 421. In this case the Section which was being considered was Section 66A of the Income-Tax Act which for the first time conferred a right of appeal to His Majesty in Council from the judgment of the High Court on a reference made to it under Section 66 of the Income-Tax Act and which came into force after the High Court had pronounced its judgment Lord Blanesburgh in delivering the judgment stated the principle to be as follows :—

> "Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders, which, when the

statute came into force, were final, are provisions which touch existing rights. Accordingly, if the Section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided."

9. The rule laid down by the Judicial Committee as above is a rule of construction of statutes. Section 3 of the Appellate Tribunals Act which lays down that the provisions of the Appellate Tribunals Act, and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, does not in our opinion touch or abrogate the effect of that decision. The word "law" used in that section does not include the above Privy Council decision as has been contended for, but in our judgment it refers to statute law. Moreover, there is nothing in the Appellate Tribunals Act or in the rules or orders made thereunder which is inconsistent with the principle formulated by the Judicial Committee of the Privy Council as mentioned above.

10. In the case of the Mills Owners' Association, Bombay *Vs.* The Rastriya Mill Mazdoor Sangh, Bombay (Labour Law Journal 1247), we held that where a right of appeal is for the first time conferred by a Statute, the material date for judging the competency of an appeal would not be the date of the institution of the suit or proceeding resulting in the judgment on award sought to be appealed against, as the case may be, but the date of the judgment, or in the case of an award the date on which it became final under the law. In that case, the award was made *after* the Appellate Tribunals Act had come into force in a proceeding which had been started before that date. We held that the appeal was competent relying upon those obesrvations made in the Delhi Cotton Mills case, cited above. In that case, we reserved our opinion in respect of the type of cases we have now before us, namely, where the award became final before the Appellate Tribunals Act was enacted, as this question did not arise and we had not then the benefit of arguments concerning this type. There is nothing in the Appellate Tribunals Act to indicate that the legislature intended it to apply to awards made *before* it came into force and which had become final before that day by reason of the law in force at the time, when the award received the seal of the appropriate Government.

We accordingly hold that the appeal is incompetent and dismiss it, but without costs.

(Signed) J. N. Majumdar,
*Chairman.*
(Signed) R. C. Mitter,
*Member.*
(Signed) G. P. Mathur,
*Member.*

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Appeal No. 116 of 1950

Amrita Bazar Patrika Ltd. — Appellants

*Vs.*

B. M. Pal and Chetram Rajoria — Respondents.

In the matter of an appeal against the award of Shri J. Prasad, Adjudicator, dated 30th September, 1950 in respect of dispute between the Amrita Bazar Patrika Ltd., Allahabad and its employees.

*Calcutta, the 24th January* 1951

*Present :*

Mr. J. N. Majumdar, Chairman.
R. C. Mitter, Kt., Member.
Mr. G. P. Mathur, Member.

*Appearances.*

For the Appellants.
Mr. Jagdish Swarup.

For the Respondents.
Mr. S. V. R. Kunoy.

*State.*—Uttar Pradesh.
*Industry.*—Paper and Printing.

DECISION

The Company dismissed a number of workmen admittedly either for neglect of duty or for misconduct. Among them were B. M. Pal and Chet Ram Rajoria. An industrial dispute relating to their dismissal was referred by the Labour Commissioner, Uttar Pradesh, for adjudication. The Adjudicator held that the charges on the basis of which B. M. Pal and Chet Ram Rajoria had been dismissed, had not been established. He accordingly directed their reinstatement with continuity of service and payment of full wages during the period of their non-employby his award dated the 30th September, 1950. The company preferred this appeal against this part of the award.

At the time of the hearing of the appeal, a preliminary objection was raised as to the competency of appeal. As the point raised was of general importance, we postponed the hearing and expressed the view that it would be desirable if the Government advocate assisted us as *amicus curiae*. At the postponed hearing the Government advocate appeared and the company was also represented by an advocate.

As no substantial question of law is involved in the appeal it will be competent only if it relates to any of the items mentioned in clause (b) of Section 7(1) of the Industrial Disputes (Appellate Tribunal) Act, XLVIII of 1950 (hereafter called the Act). The applicant contends that the case comes within item No. (i) ("wages" and item No. (vii) ("retrenchment of workmen") of the said clause (b).

The case does not fall within item No. (i) (wages), because, in our opinion, the dispute in question, resulting in the award or decision, must directly relate to wages in order to make the award or decision appealable under item (i) and must not arise indirectly as in the case under appeal. No doubt the award directs the company to pay wages to those two workmen from the date of dismissal to the date of reinstatement, but in essence the order is for the payment of *compensation* for the forced non-employment and only the *measure of compensation* has been taken at the wage rate for that period.

The next question is whether the case comes within item No. (vii)—"retrenchment of workmen".

The cardinal rule of construction is that words in a statute should *prima facie* be taken to have been used in their ordinary sense. Thus observed Lord Coleridge in R. *Vs.* Peters (1886, 16 Q.B.D. 636 at 641) :—

"I am quite aware that dictionaries are not to be taken as authoritative exponents of the meaning of words used in Acts of Parliament, but it is a well known rule of Courts of Law that words should be taken to be used in their *ordinary* sense, and we are, therefore, sent for instructions to these books". But as the function of a Court is to ascertain the intention of the legislature, this rule is subject to another rule, namely, that words cannot be construed effectively without reference to their context; and where Acts are divided into separate sections, each having effect as a substantive enactment without introductory words the section in which the obscure words occur is first to be considered. It is only in a second or last resort that the rest of the Statute, or the preamble or the scheme or the governing intention is to be regarded (per Jessel M.R. in Spencer *Vs.* Metropolitan Board of Works, 22 CLD. 142 at 162 Craes on Statute p. 147, 3rd edn.). Bearing these rules in mind we have to construe the word "Retrenchment" as used in item (vii) of Section 7 (i) (b) of the Act.

The ordinary meaning of the word is "to get rid of the surplus". The word would not *prima facie* include cases of dismissal for misconduct, neglect of duties or for reasons of a like nature, and in our opinion, the ordinary meaning must be adopted, unless the context otherwise implies.

The word "retrenchment" has not been used elsewhere in the Act. The words "discharge" and "dismissal", however, have been used in another section of the Act, namely, Sec. 22 (b). The word "discharge" used in that section along with its collocation with the phrase "whether by dismissal or *otherwise*" indicates that it has been given a very wide impart so as to comprise within it any kind of termination of employment, unrelated to punishment, including "retrenchment" in its primary sense on economic or other such legitimate grounds. It is pertinent to observe that the Act gives a right of appeal against awards and decision of Industrial Tribunals made in respect of industrial disputes, and these disputes include disputes "connected with employment of non-employment". In the case of Western India Automobile Association *Vs.* The Industrial Tribunal, Bombay (53 CWN. 59 F.C.) the Federal Court held that "any dispute connected with employment or non-employment would ordinarily cover all matters that require settlement between workmen and employers, whether those matters concern the causes of their being out of service or any other questions and would include within its scope the reliefs necessary for bringing about harmonious relations between the employers and the workmen". In arriving at that conclusion the Federal Court considered the scope of the words "employment" and "non-employment" separately and observed that the term "non-employment" is very wide and would include within it all cases of termination of service. Thus all cases of discharge or punishments by way of dismissal or otherwise would come within the ambit of the phrase "non-employment", and the remedy of the workmen in each of these cases would lie in reinstatement, if the non-employment by the employer

could not be justified. Therefore, if the legislature intended to give a right of appeal in cases of dismissal by way of punishment or discharge otherwise then merely by way of retrenchment (used in its ordinary sense), the appropriate word would have been "non-employment" or any other equivalent expression conveying the same meaning in the place of the word "retrenchment" as used in item (vii) of Section 7(i)(b) of the Act. We must, therefore, conclude that the word "retrenchment" has been used in the aforesaid item in its ordinary meaning and does not include cases of dismissal or termination of employment for any other reason.

We accordingly hold that the appeal is incompetent. It is, therefore, not necessary for us to consider the merits.

The result is that the appeal is dismissed. The parties to bear their respective costs.

(Signed) J. N. Majumdar,
*Chairman.*
(Signed) R. C. Mitter,
*Member.*
(Signed) G. P. Mathur,
*Member.*

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Appeal No. 100 of 1950

Pipe Mill Mazdoor Union, Lucknow. Appellants.

*Versus*

Indian Hume Pipe Co. Ltd., Lucknow. Respondents.

In the matter of an appeal against the decision of the Industrial Court (Electricity and Engineering), Allahabad, as published in the U.P. Government Gazette, Allahabad of 2nd September, 1950, in appeals Nos. 24 and 26 of 1950, of the said Court in respect of the award given by the Regional Conciliation Board (Electricity and Engineering), Lucknow, in the industrial dispute between the Lucknow branch of the Indian Hume Pipe Company (Bombay) and its employees.

*Allahabad, the 14th February* 1951

*Present :*

R. C. Mitter, Kt., President.
Mr. G. P. Mathur, Member.

*Appearances.*

For the Appellants.

Mr. S. K. Dwivedi, Vice-President of the Union.

For the Respondents.

Mr. Patwardhan, Manager.
*State.*—Uttar Pradesh.
*Industtry.*—Engineering.

DECISION

The Respondent is a joint stock company with a paid-up capital of Rs. 80,00,000 divided into thirty thousand ordinary shares of the face value of Rs. 100 each and fifty thousand 5 per cent. cumulative preference shares of like value. The head office of the Company is at Bombay. It has many branches and workshops in different parts of India, namely, at Allahabad, Jhansi, Jamshedpur, Delhi, Lucknow and other places. The Company's financial year is from July to June.

2. The claim in this appeal relates to bonus for the years 1947-48 and 1948-49 by the workmen of the Lucknow branch. The claim is on the basis of profit made by that branch. Bonus at the rate of three months consolidated wages for each of those financial years was claimed by the workmen. The Regional Conciliation Board (Electricity and Engineering), Lucknow, however, awarded bonus of 1½ months' consolidated wages for the year 1947-48 and 15 days' consolidated wages for the year 1948-49 to workmen who had worked continuously for thirty days at least in the respective years. But on appeal, the Industrial Court has dismissed the claim for both those years.

3. The Company resisted the claim on the gorund that for the purposes of bonus, the profits earned by the entire concern in the years in question and not the profits of the Lucknow branch only, are to be taken into account and that the profits made by the entire concern in those two years were so small that even dividends on the preference shares could not be paid, nor could proper provision be made for depreciation.

4. The Company has produced its balance sheets for the years 1947-48 and 1948-49. They show that after the payment of dividend for the year 1946-47, a sum of Rs. 12,000 was left as surplus and that the profits of the whole concern for the year 1947-48 was Rs. 96,139, and with the carry over of Rs. 12,000 from the previous year, the mount at the credit of the Company at the end of that year was only Rs. 1,08,139. The dividend on the preference shares alone in each year was Rs. 2,50,000 and so, for the year 1947-48 nothing could be paid as dividend even on the preference shares.

5. The balance sheets of the year 1948-49 show the profit of the whole concern to be Rs. 1,40,140 and with the balance of Rs. 1,06,139 carried over from the previous year, the amount of Rs. 2,43,279 odd was available and in that year this sum together with another small amount which was available was employed for paying dividend on the preference shares leaving a balance of Rs. 17,113 odd to be carried over to the next year.

6. This defence was over-ruled by the Regional Conciliation Board on the ground that even for the year 1947-48 bonus was offered by the Company at a rate lower than what had been claimed by the workmen of Jamshedpur, Delhi and Jhansi branches and awards were made in favour of the workmen of those branches at higher rates than what had been offered by the Company. The Industrial Court, however, held that those awards were not helpful and the defence of the Company as taken in this case was a valid defence. The material question before us is whether the Lucknow branch of the Company is to be taken as a distinct unit for the purposes of bonus.

7. The Company supplied some written information with regard to the Lucknow branch at the request of the Regional Conciliation Board (Electricity and Engineering), Lucknow. The paper has been marked as Exhibit 4 in this case and has very important bearing on the question that we have to consider and which we have formulated above.

8. That paper shows that the account of the Lucknow branch is kept separately and the net profit of that branch in the years 1947-48 and 1948-49 respectively stood at Rs. 23,587 and Rs. 16,541. That paper also shows that the amount of capital employed in the factory at Lucknow was Rs. 87,086 in the year 1947-48 and Rs. 97,718 in the year 1948-49. This paper, therefore, in our opinion, establishes the fact that the Company kept accounts of the Lucknow branch both as regards capital and profit and loss separately as if it was an independent unit. If a reasonable return, 5 per cent. or even more be allowed for the capital employed in this branch, there would be a surplus of more than Rs. 18,000 for the year 1947-48 and about Rs. 10,000 for the year 1948-49, and allowing a reasonable amount for depreciation for the Lucknow workshop there would be still an appreciable surplus for the distribution of bonus. We will accordingly consider at what rate bonus is to be awarded.

9. It is quite apparent that bonus for the year 1948-49 must be at a lesser rate than the bonus to be awarded for the year 1947-48. As the dearness allowance paid to the majority of the workmen in this branch far exceeds the basic wage, we think that bonus should be awarded not on the basis of basic wages but of consolidated wages and taking into consideration the accounts of the surplus available for those two respective years, we think that it would be fair to award bonus at the rate of one month's consolidated wages for the year 1947-48 and 15 days' consolidated wages for the year 1948-49 to all workmen who had put in continuous service for thirty days or more in the respective years. On a rough calculation, the amount of bonus that will have to be paid would be, we are told, about Rs. 3,000 for the first mentioned year and about Rs. 1,500 for the second mentioned year. The surplus available for those years would be sufficient to meet the bonus which we award for those years and still leave a decent balance as fair return to capital and for being set apart for depreciation, etc. The result is that this appeal is allowed and it is ordered that the Respondent shall pay one month's consolidated wages as bonus for 1947-48 and 15 days' consolidated wages as bonus for 1948-49 within a month from this date. Parties to bear their own costs.

(Signed) R. C. Mitter,
*President.*
(Signed) G. P. Mathur,
*Member.*

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Appeal No. 132 of 1950

Sooti Mill Mazdoor Union, Kanpur. Appellants.

*Versus*

J. K. Cotton Spg. & Wvg. Mills Co. Ltd.,
Kanpur. Respondents.

In the matter of an appeal against the decision of the President, Industrial Court (Textile and Hosiery), U.P., Kanpur, made on 6th October, 1950, in appeals Nos. 70

and 74 of 1950 of the said court in respect of the award given by Regional Conciliation Board (Textiles), Kanpur in the industrial disputes between J. K. Cotton Spg. & Wvg. Mills Co. Ltd., Kanpur, and its employees, Raja Ram Singh and Gayadin Singh.

*Allahabad, the 14th February 1951*

*Present :*

R. C. Mitter, Kt., President.

Mr. G. P. Mathur, Member.

*Appearances :*

For the Appellants :

Mr. S. Verma.

For the Respondents :

Mr. B. Mukherjee, Secretary of the Management.

*State.*—Uttar Pradesh.

*Industry.*—Textiles.

DECISION

It appears that on the night between 1st and 2nd December, 1949, there was a theft at the bungalow of Lala S[illegible]n Lal Singhania, Director-in-Charge, Messrs. J. K. [illegible]on Spinning and Weaving Mills, Kanpur. He lodged a report on the next day and in that report he expressed his suspicion against Gayadin and Raja Ram Singh of the Watch and Ward who were on duty at his Bungalow on that particular night. On an investigation by police, no case was established and, therefore, no prosecution followed. The Management, however, framed charge sheets under Order 20(d) of the Standing Orders and asked for an explanation from them. The Management thereafter asked for permission from the R.C.O. to dismiss the two persons named above and as the prayer was granted, they were dismissed. The matter was then taken to the Conciliation Board by Gayadin and Raja Ram Singh and the decision of that Board was in favour of these two persons. The Board ordered their reinstatement with continuity of service and further ordered that they will get full wages including D.F.A. from the date of suspension to the date of dismissal. It, however, directed that the period from the date of dismissal to the date of reinstatement would be considered leave without pay. As against this award, two appeals were filed before the Industrial Court, one by the Management and the other by Gayadin and Raja Ram Singh. The learned President of the Industrial Court came to a finding that it was not proved that Gayadin Singh and Raja Ram Singh committed theft and he made the following observations :—

> "It may be that the theft was committed by some other domestic servant and, therefore, the utmost that could be attributed to the watchman would be negligence or carelessness in the performance of duty as contemplated in Standing Order 20(i). Even if these ingredients are not proved, the fact remains that the employer has lost confidence in these watchmen."

It appears on the strength of a quotation in another case which he had taken from the judgment from Bombay Industrial Court in Alcock, Ashdown & Co. Ltd., Bombay, *Vs.* Their workmen reported at page 830 of the Industrial Court Reporter he set aside the award of the Board. At the end of the judgment he added :—

> "It will be open to the Management to take action to terminate the services of these two watchmen in accordance with the provisions of Standing Order 17(a)."

It appears to us that the learned President of the Industrial Court imagined that these persons were already reinstated, and he, therefore, suggested a method to get rid of them. At the time of hearing, a preliminary objection was taken that the appeal was not competent as it did not raise any substantial question of law. The perusal of the facts and the findings of the Industrial Court disclose that more than one substantial question of law are involved and, therefore, the appeal is certainly competent. In the first place those persons were charged under Standing Order 20(d), which was admittedly not applicable. No attempt was subsequently made to frame a proper charge according to the Standing Order 20(1). This meant that these two persons had been dismissed without any proper charge sheet or proceeding and this in itself would be substantial question of law. There the judgment of the Industrial Court has introduced a new theory in the industrial field that an employee can be dismissed when the employer has lost confidence in him without notice. It has to be seen if this would be legal and thus a substantial question of law shall have to be decided. We have no doubt in our minds that the appeal is competent. Coming to the merits of the case, the facts mentioned are sufficient to hold that the judgment of the Industrial Court cannot be maintained. No person under the ordinary concept of natural justice can be dismissed without being properly charge-sheeted and given an opportunity of explaining his conduct. As such, it is obvious that dismissal of these two persons who were dealt with in contravention of the standing order, and principles of natural justice cannot be upheld and it will be deemed as if they were never dismissed. We will, therefore, set aside the award of the Industrial Court and restore the order that passed by the Conciliation Board. The appeal is allowed with Rs. 25 as cost to the appellant.

(Signed) R. C. Mitter,
*President.*
(Signed) G. P. Mathur,
*Member.*

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Appeal No. 104 of 1950

Jaswant Sugar Mills Ltd., Meerut. Appellant.

*Versus.*

The Employees of Jaswant Sugar Mills Ltd. C/o the Jaswant Sugar Mills Mazdoor Sabha, Meerut. Respondents.

In the matter of an appeal against the award of Shri J. Prasad, Adjudicator and Conciliation Officer appointed under U.P. Govt. Order No. 176(ST)/18, dated 12th January, 1950 in respect of the Industrial dispute between the Jaswant Sugar Mills Ltd., Meerut, U.P., and its employees.

*Allahabad, the 15th February 1951*

*Present :*

R. C. Mitter, Kt., President.
Mr. G. P. Mathur, Member.

*Appearances :*

For the Appellants :
Mr. H. S. Brar, Labour Officer.

For the Respondents :
Mr. H. N. Bahuguna, Jt. Secretary, I.N.T.U.C., U.P.
*State.*—Uttar Pradesh.
*Industry.*—Sugar.

DECISION

1. The subject matter of this appeal relates to the claim for wages for seven days said to be payable to 12 seasonal workmen (serial Nos. 10 to 21). They along with many other seasonal workmen were employed by the factory from the beginning of the crushing season 1949-1950. One of them, namely, Jai Prakash, was discharged on the 2nd February and the remaining eleven on the 16th February, 1950. The crushing season of this factory ended on the 24th February 1950. The ground on which they were put off the work was that as the end of the season was approaching the cane supply was dwindling from day to day and so there was no work for all the seasonal workmen.

2. On the facts we are satisfied that there was lesser work in the factory on account of the dwindling supply of cane at the time when those workmen were discharged and the management would have been justified in reducing the strength of seasonal workmen, unless the law prevented it from doing so. In accordance with rule 17-8(II) of the U.P. Sugar Factories Control Rules, 1938, the management had sent a notice to the Collector on the 7th February 1950 intimating that as not a single cane stick was available in the Baleric centre since four days past it would close that cane purchasing centre from the 9th February. A similar notice was given on 10th February intimating that for similar reasons the cane purchasing centre at Hasanda would be closed from the 12th February, 1950. The third notice given on the 13th February, 1950 was in respect of the closing of the remaining centres (three in number) from the 18th February next. In pursuance of these notices those centres were closed as from the dates mentioned in the notices. On these facts there cannot be any doubt as to the truth or sufficiency of the grounds alleged by the management for reducing the strength of those seasonal workmen at a time before the crushing season ended.

3. The law on the subject of the rights of seasonal workmen is contained in the annexure to G.O. No. 6308 (ST)/XVIII-261(ST)/1947, dated Lucknow, the 23rd October, 1948. Paragraph 1 of that annexure is only relevant.

That order was extended from year to year and is now in force. We had occasion to construe that paragraph in the Upper India Sugar Mills Ltd. (Khatauli) *Vs.* the Upper India Chini Mill Mazdoor Union (1951,I.L.L.J. 176). There we held that the effect of that paragraph was that a seasonal workman who had satisfied the condition precedent mentioned there had the right to be employed in the next crushing season and *for the whole of it.* In this view of the matter the twelve seasonal workmen had the right under this Order to be employed upto the very end of the crushing season, that is to say, upto the 24th February, but subject to the Standing Orders. The questions, however, of Standing Orders relating to play-off did not arise on the facts of that case, because that case related to the claim of seasonal workmen to be employed at and from the *beginning* of the crushing season, when there was no question of short supply of raw materials.

4. Standing Order No. K deals with play-off. It applies to all workmen, permanent and seasonal. Paragraph (1) thereof gives the right to the Management in certain events, and they include shortage of raw materials, to stop a department or departments wholly or *partially* for a period or periods. The Management, therefore, could put-off the work those seasonal workmen for the period from the 17th to the 24th February, if the grounds alleged by it fall within that paragraph. There is no charm in the word "discharged". We have to see the facts squarely and see if the case comes within paragraph (1) of Standing Order No. K, and we hold that it does. Paragraph (2) of that Order is accordingly attracted. The Management must therefore, pay compensation to those seasonal workmen, in terms of that paragraph. It is desirable that the Government should make rules for determining the rate of compensation in such cases in order to obviate disputes and to avoid references to Regional Conciliation Boards, but we are told that no rules have been made so far by the Government. So we have to determine the amount of compensation. On the special facts of this case, namely, that the period is only seven days we do not wish to disturb the award relating to the quantum of the liability of the management. The result if that we dismiss the appeal though not on the reasons given by the Adjudicator. Parties to bear their respective costs.

(Signed) R. C. Mitter,
*President.*

(Signed) G. P. Mathur,
*Member.*

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Appeal No. Cal-34 of 1950

The Muir Mills Co. Ltd., Kanpur. Appellants.

*Versus*

Suti Mill Mazdoor Union, Kanpur. Respondents.

In the matter of an appeal against the award of Shri T. Ramabhadran, President Industrial Court (Textile and Hosiery), Kanpur, made on 8th November 1950 in respect of an Industrial dispute between the Muir Mills Co. Ltd., Kanpur and its workmen.

*Allahabad, the 20th February* 1951

*Present :*

Mr. J. N. Majumdar—*Chairman.*
R. C. Mitter, Kt.—*Member.*
Mr. G. P. Mathur—*Member.*

*Appearances :*

For the Appellants :

Mr. D. N. Sud, Advocate, with Mr. M. L. Khullar, Labour Officer.

For the Respondents :

Mr. A. R. Tewari, President of the Union.

*State.*—Uttar Pradesh.

*Industry.*—Textile and Hosiery.

DECISION

By a Government Order No. 3754(LL)/XVIII-894(L)-1948, dated, Lucknow, December 6, 1948, made under powers conferred by clauses (b) and (g) of Section 3 of the United Provinces Industrial Disputes Act, 1947, minimum wages payable by the Cotton and Woollen Textile Industries and Electrical undertakings were fixed. The scale of dear food allowance was also fixed. Clause 7 of this Government Order is the only relevant paragraph for the purpose of this appeal. It runs as follows :—

> "Every employee of an Industrial concern or undertaking to which this order applies, shall be paid wages including dear food allowance in accordance with the provisions of clause (2), (3), (5) and (6) :
>
> Provided, firstly, that where the consolidated wage payable to an employee who was on the pay roll of the concern or undertaking on November 30, 1948, is more than the consolidated wage payable in accordance with the provisions of the said clauses, the difference shall be paid to him as *personal wage.*
>
> Provided, secondly, that the personal wage shall be absorbed in any increments earned in future in basic wage".

A subsequent Government Order No. 435(LL)/XVIII-46(LL)-1949, dated Lucknow, March 18, 1949, recited that difficulties were being expressed in regard to the correct interpretation and implementation of the provisions *inter alia* of the said Government Order. Accordingly by that order a Tripartite Board was constituted for decision *inter alia* of the disputes referred to it relating to the interpretation and implementation of the provisions of the said Government Order, dated 6th December, 1948, was to be decided by that Board. Clause (iii) of this Government Order provided that "if the majority of the members agree with the decision of the majority, and if the members disagree *inter se*, the decision of Labour Commissioner shall prevail. Decision so given shall be final and binding on parties." The disputes which were referred to it are stated under two issues. The first issue related to the question as how "personal wage" as mentioned in clause 7 of the Government Order, dated 6th December, 1948, was to be determined. On this point there were differences between the employers and the employees and the nature of those differences was indicated in subparagraph (a) and (b) of that issue as framed by the Tripartite Board. The second issue was in the following terms :—

> "How should the position be *regularised in view of the Board's decision on Issue No.* 1."
>
> The only substantial dispute, therefore, that was raised before the Tripartite Board between the employers and the employees related to the method of fixation of "personal wage".

The Tripartite Board considered those two issues in paragraphs 3, 4 and 5 of its award made on the 23rd September 1949. Paragraph 6 of the said award contained the following observations :—

> "The Employers' Association of Northern India when the Government Order, dated 6th December, 1948, was issued discussed the implementation of it with the Labour Commissioner and issued certain instructions to their member concerns in that connection ; and one of these instructions reads as follows :—
>
> "In the case of employees who are already in receipt of a salary in excess of what they would be paid under the order the amounts of excess will be regarded as being the individual's "personal wage", and will be absorbed either partially or totally, as the case may be, in such increments *and/or earnings* in basic wages which may occur in future."
>
> This instruction of the Employer's Association of Northern India is wholly in accordance with the interpretation placed by the Board on the relevant provision in the G.O., dated December 6, 1948.

Paragraph 7 of the said award was as follows :—

> "The Board, therefore, unanimously hold that the contention of the employers in this case is untenable ; and that the position taken by the workers is correct and is, therefore, upheld."

This paragraph obviously refers to the method of fixation of the "personal wage".

The italicised portion of the instructions ("and/or earnings") given by the Employers' Association of Northern India to their member concerns, which we have quoted above and which was embodied in the said paragraph 6 of the award, is an addition which does not occur in second proviso of clause 7 of the Government Order, dated 6th December, 1948.

We are of opinion that in view of the issues as framed by the Tripartite Board no decision as to the correct interpretation of the second proviso to clause 7 of the said Government Order, dated 6th December, 1948, was called for. The *binding* decision of that Board was in respect of the method of fixing the personal wage and the observation made by that Board in the concluding portion of paragraph 6 of its award was, therefore, obiter. We

accordingly do not accept the contention advanced on behalf of the appellants that those observations are to be treated as final between the employers and the employees. In this view of the matter, the Regional Conciliation Board and the Industrial Court had jurisdiction to go into the question raised before them and we are free to interpret the second proviso to clause 7 of the Government Order of the 6th December, 1948.

Both the Regional Conciliation Board and the Industrial Court on appeal held that "personal wages" should be absorbed only if there was increase in the rate of basic wages. Both the Regional Conciliation Board and the Industrial Court came to this conclusion by interpreting the award of the Tripartite Board. We think, as we have already indicated, that the question involved in the reference, which is before us on appeal, has to be decided on the interpretation of the second proviso to clause 7 of the Government Order of the 6th December, 1948. In this view of the matter, we hold that the appeal is competent before us under Section 7, sub-section (i), clause (a) of the Industrial Disputes (Appellate Tribunal) Act, 1950, as it involves a substantial question of law.

On the interpretation of proviso 2 to clause 7 of the said Government Order, dated 6th December, 1948, we have no doubt, that proviso contemplates future increments of an employee and provides for the absorption of the "personal wage", which must be calculated in accordance with the award of the Tripartite Board, in one certain manner and in no other. The word "increments" mentioned in that proviso, is, according to our opinion, qualified by the words "*in basic wages*". That in our opinion, means that if there are increments in basic wages, that is to say, if the rate of basic wage be increased, then and then only there would be the occasion for the absorption of the personal wage, wholly or *pro tanto*.

We accordingly uphold the award of the Regional Conciliation Board and of the Industrial Court on the reasons given by us. The result is that this appeal is dismissed but without costs.

(Signed) J. N. Majumdar,
*Chairman.*

(Signed) R. C. Mitter,
*Member.*

(Signed) G. P. Mathur,
*Member.*

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Appeal No. 141 of 1950

The Lakshmiji Sugar Mills Co. Ltd., Maholi. **Appellants.**

*Versus*

The Mazdoor Sangh, Maholi. Respondents.

In the matter of an appeal against the decision of the Industrial Court (Sugar), Lucknow, made on 19th August 1950 in appeal No. 40 of 1950 in respect of an Industrial dispute between the Lakshmiji Sugar Mills Co., Ltd., Maholi, and its Mazdoor Sangh.

*Allahabad, the 19th February 1951*

*Present* :

Mr. J. N. Majumdar, Chairman.

R. C. Mitter, Kt., Member.

Mr. G. P. Mathur, Member.

*Appearances* :

For the Appellants :

Mr. H. S. Brar, Labour Officer.

For the Respondents :

Mr. H. N. Bahuguna, Jt. Secretary, I.N.T.U.C., U.P.

*State.*—Uttar Pradesh.

*Industry.*—Sugar.

DECISION

This appeal came up before my learned brothers Mitter and Mathur, but as they came to different conclusions, the appeal has been referred to me under Section 9, clause 8 of the Industrial Disputes (Appellate Tribunal) Act, 1950, for final disposal.

This is an appeal against the decision of the Industrial Court (Sugar), Lucknow, dated 19th August, 1950, confirming an award made by the Regional Conciliation Board (Sugar), Lucknow. The appeal is directed against the decision on Issue No. 2 as framed by the said Board which runs as follows :—

"Whether the employees are entitled to leave with pay for the season 1947-48 and 1948-49."

The Respondent Mazdoor Sangh had claimed credit of leave due to the employees with pay for the season 1947-1948 and 1948-1949. The Appellant Mill's contention before the Board was that their concern was a seasonal factory, their confectionary section having been closed in June, 1948 and thus Chapter IV(a) of the Factories Act of 1934 (as amended by Act III of 1945) which provided for holidays with pay had, by reason of Section 49(a), no application in their case. Thus, no holiday or leave became due to the workers during those seasons. They also stated before the Board that as for the season 1947-48, ten days leave had been given to the workers who were entitled to it.

The Mazdoor Sangh's reply to that contention was that the distinction between 'seasonal' and 'perennial' factories had been done away with by the Factories Act of 1948 (LXIII of 1948) which came into force on 1st of April, 1949, and repealed the Factories Act of 1934 and the Factories Amendment Act of 1945, and on and after that date, all leave should be calculated according to the provisions of the latest Act.

It appears that prior to the matter being brought before the said Board, the Mazdoor Sangh had made a reference about this dispute to the Chief Inspector of Factories who expressed the view *inter alia* that,

(1) "the workers who had completed their 12 months' service before 1st April, 1949 (*i.e.*, the date when the new Factories Act came into force) and did not avail their earned leave before 31st March, 1949, are entitled to get leave according to the provisions of Section 79 of the new Factories Act, 1948, *i.e.*, at the rate of one day for every 20 days' service in case of an adult and 1/15 in case of a child".

(2) the workers who had completed a period of four months service on or after 1st April, 1949, and if their services are terminated, they are entitled to payment in lieu of proportionate leave with wages due to them. This is equally applicable to the seasonal sugar factories' employees as well, since there is no distinction of seasonal or non-seasonal concerns under the Factories Act of 1948."

The document containing the Chief Inspector of Factories' view is Exhibit A/1 filed by the respondent.

On the 10th June, 1950, the Board made the following award in respect of Issue No. 2 :—

"The Board decides that the clarification given by the Chief Inspector of Factories should be given effect to by the Management and arrears of leave or payment in lieu of it may be made to the workers concerned within a month of this order. If any other complication arises in this connection the parties feeling aggrieved may refer the cases to the Chief Inspector of Factories whose clarification should be considered to be final and binding in the matter."

The Industrial Court affirmed the award of the Board on the 19th August, 1950, observing that in its opinion the interpretation of the Chief Inspector of Factories in the matter of leave with full pay to the employees was entitled to respect and that in Section 79 of the new Factories Act, there was no indication that the period of twelve months' continuous service in a factory was to be reckoned from the date when the Act came into force and the language of the section did not indicate that previous service before the Act came into force was to be left out of account.

If, therefore, agreed with the view of the Board that the annual leave with wages should be reckoned by the Management in keeping with Section 79 of the Factories Act of 1948, and in the light of the interpretation given by the Chief Inspector of Factories.

It has been observed by my learned brother Mathur and I cannot also pass without observing that the Board in making its award has gone beyond its jurisdiction and has unwarrantedly delegated its function to the Chief Inspector of Factories with respect of future complications. I express my utmost disapproval of the course adopted by the Board and I must hold that portion of the award providing for the clarification of the Chief Inspector of Factories in respect of other complications that might arise to be invalid and inoperative. If the remaining portion of the award was not severable from the portion declared invalid, I would have no hesitation in declaring the whole award to be bad wihout going into the consideration of other questions involved.

As matters stand, the only question that arises for consideration before this Tribunal is, whether the Factories

Act of 1948 (LXIII of 1948) governs the leave due to the employees for the period 1947-1948 and 1948-49 or in other words, whether the said Act can be given retrospective effect.

This question of law was admittedly before the Board and the Industrial Court though it may not have been in this exact form and they by accepting the clarification of the Chief Inspector of Factories, decided that the Factories Act of 1948 was to be given retrospective effect. It cannot, therefore, be said that the question has been raised for the first time before this Tribunal. Besides it is well-establi hed rule in Courts that a question of law, arising on the facts as they exist, may be raised at any stage of proceedings and I see no reason why a departure should be made in this case. Under the Labour Appellate Tribunal Act, an appeal lies to this Tribunal *inter alia*, on a substantial question of law and the inequality in the legal training of the representatives of the parties cannot be a consideration for not determining the principles of Law or giving effect to them when required.

Before I can come to a decision on the above question I shall have to examine the section of both the Acts of 1934 (as amended by Act III of 1945) and the Act of 1948 so far as relevant to our purposes.

I. *Factories Act XXV of* 1934 *(as amended by Act III of* 1945).

*Section* 49-*A* (1) provides that Chapter IVA which deals with the leave of workers shall not apply to any seasonal factory.

*Section* 49-*B*(1).—Every worker who had completed a period of 12 months' continuous service in a factory shall be allowed during the subsequent period of twelve months holiday for a period of ten days, or if a child, 14 consecutive days ..... etc."

*Section* 49-*B* (3).—"If a worker entitled to holidays under sub-section (1) is discharged by his employer before he has been allowed the holidays, or if, having applied for and having been refused the holidays, he quits his employment before he has been allowed the holidays, the employer shall pay him the amount payable under Section 49-C in respect of the holidays."

II. *Factories Act XLVIII of* 1948.

*Section* 79(1).—"Every worker who has completed a period of 12 months' continuous service in a factory shall be allowed during the subsequent period of 12 months, leave with wages for a number of days calculated at the rate of—

(i) if an adult, one day for every twenty days of work performed by him during the previous period of twelve months subject to a minimum of ten days, and,

(ii) if a child, one day for every fifteen days of work performed by him during the previous period of twelve months subject to a minimum of fourteen days."

(*Second Proviso*)

Provided further that where the employment of a worker who has completed a period of four months' continuous service in a factory is terminated before he has completed the period of twelve months' continuous service he shall be deemed to have become entitled to leave for the number of days specified in this sub-section, the same proportion as the period of his continuous service bears to the continuous service of 12 months and the occupier of the factory shall pay to him the amount payable under section 80 in respect of the leave to which he is deemed to have become entitled."

We are not concerned with the question of appellants' factory being seasonal or not, as there is no finding to that effect by the Board and it is a common case that it was not seasonal up to June, 1948.

On comparison of the above provisions of the two Acts the following points deserve to be noted :—

(1) that the number of days of leave as provided in the Factories Act of 1948 is greater than that prescribed in the Factories Act of 1934 (as amended);

(2) that there is in the Factories Act 1948 a provision for a minimum period of leave which is absent in the Factories Act of 1934 (as amended);

(3) that in the Factories Act of 1934 (as amended), a discharged workman is entitled to compensation for holidays if he had earned such holidays by continuous service for twelve months, whereas under the Factories Act of 1948, a worker is entitled to a proportionate compensation if he had completed a period of four months continuous service before his employment is terminated.

It is apparent from the above that under both the Acts the worker acquired a right call it 'holiday with pay' as in the amended Act of 1945 or 'leave with wages' as in the Act of 1948 and that right in substance amounted to getting wages for a certain number of days, no more, and no less, without doing any work. The time element is the essence of the right and if it is altered as has been done by the Factories Act of 1948, it would not be wrong to hold that in the eye of law it was a new right created. Even if not a new right, the Factories Act of 1948 in any event, gives to the workmen greater right in the matter of leave and puts the employer under increased obligation than what was provided for in the Factories Act of 1934 (as amended). Thus, if the Factories Act of 1948 be made applicable in deciding the question of leave during 1947-48 and 1948-49 undoubtedly the employer will have to bear the increased burden.

The principles by which a statute can be given retrospective effect are well recognised and have been laid down in well-known text books regarding interpretation of statutes. Every legislation is perspective in its operation generally. It can operate retrospectively when there is express provision or necessary intendment to that effect or when its provisions deal with matters of procedure only. The rule against retrospective operation of statute is based upon the presumption that the legislature does not intend what is unjust and it applies when there is a creation of a new right in one class of persons attended with the imposition of a new obligation on others or when there is interference with some vested rights. The same rule has been laid down in the Full Bench of the Calcutta High Court, Joganad Singh *Vs.* Amritlal Sircar (I.L.R. 22 Cal. p. 767) which has been relied upon by the appellants. In my opinion that above principle regarding retrospective operation of statute will be equally applicable to the case where a new statute has increased the burden of obligation provided in the Act repealed by it.

The observation of the Industrial Court that there is no indication under Section 79 of the Factories Act of 1948 that the period of 12 months' continuous service in a factory is to be reckoned from the date at which the Act came into force need some comments. It does not follow that because a statute does not contain such words as "from and after its commencement" that the statute is retrospective, or that when it contains such words it is prospective. As to whether a statute is retrospective or not has to be determined by application of the rules stated above.

Applying the aforesaid rule, I hold that Factories Act of 1948 is not retrospective in operation and the view expressed by the Chief Inspector of Factories except that in respect of workmen whose services have been terminated is wrong. Consequently the award of the Board and the decision of the Industrial Court are bad to the extent of their acceptance of the said view.

As both under the Factories Act of 1934 (as amended) and Factories Act of 1948, completion of a period of 12 months continuous service only entitles a worker to leave, the date of completion would determine which of the two Acts would govern his case. Thus, where a worker had completed his 12 months' service on or before the 31st March, 1949, his leave would be on the basis of his Factories Act, 1934 (as amended). But where his such service is completed after 31st March, 1949, his leave has to be calculated in the manner prescribed by Factories Act of 1948. The case of a worker whose employment has been terminated would be governed by the same principle. Therefore, where the minimum period of four months service as required by the second proviso to Section 79 of the Factories Act of 1948 has ended on or after 1st of April, 1949, that Act would apply. In this, the Chief Inspector of Factories' view was correct as I have already indicated before.

The view that I have taken is that the award should be on the lines as suggested by my learned brother Mitter. This is as follows :—

(1) workers who had completed their twelve months' service on or before the 31st March, 1949, would be entitled to leave at the rate and according to the provisions of Chapter IV-A of the Factories Act of 1934;

(2) those whose twelve months' service ended on or after the 1st April, 1949, would be entitled to get leave at the rate and according to the provisions of Section 79 of the Factories Act of 1948;

(3) workmen whose services had been terminated before twelve months of service would be entitled to compensation in terms of the proviso of Section

79 of the Factories Act of 1948, if the minimum period of four months mentioned therein oversteps the 31st March, 1949.

I do not see how the apprehension expressed by my learned brother Mathur that such an award would be fruitful source for starting industrial dispute. The Tribunal should give its decision based on law applicable to the case under its consideration and parties are required to submit to it. It is by such decision only that the parties will come to know their respective rights and obligations with an amount of certainty which will tend to help them in adjusting their relations Parties to bear their own costs of appeal throughout.

(Signed) J. N. Majumdar,
*Chairman.*
1-3-51.

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Appeal No. 141 of 1950

The Lakshmiji Sugar Mills Co. Ltd.
Maholi. Appellants.

*Versus*

The Mazdoor Sangh, Maholi. Respondents.

In the matter of an appeal against the decision of the Industrial Court (Sugar) Lucknow, made on 19th August 1950 in appeal No. 40 of 1950 in respect of an Industrial Dispute between the Lakshmiji Sugar Mills Co. Ltd., Maholi, and its Mazdoor Sangh.

*Dated the 4th December 1950*

*Present*

R. C. Mitter, Kt., President,

Mr. G. P. Mathur, Member.

*Appearances* :

For the Appellants.

Mr. H. S. Brar, Labour Officer.

For the Respondents

Mr. H. N. Bahuguna, General Secy, I.N.T.U.C., Uttar Pradesh.

*State.*—Uttar Pradesh.

*Industry.*—Sugar.

DECISION

The question in this appeal relates only to Issue No. 2 as framed by the Regional Conciliation Board (Sugar) Lucknow. That issue runs as follows :—

"Whether the employees are entitled to leave with pay for the season 1947-48 and 1948-49.

The question both before the Regional Conciliation Board and the Industrial Court was whether the Factories Act of 1934 or of 1948 would regulate the leave of the workmen. The Board made its award in the following terms :—

"The clarification given by the Chief Inspector of Factories should be given effect to by the Management and arrears of leave or payment in lieu of it may be made to the workers concerned within a month of this order. If any other complication arises in this connection, parties feeling aggrieved may refer the cases to the Chief Inspector of Factories whose clarification should be considered to be final and binding in the matter."

The clarification by the Chief Inspector of Factories referred to in the award is contained in a letter written by him which has been marked as Exhibit A/1 in the case. The relevant portion of that letter runs as follows :—

(1) "that the workers who had completed their 12 *months service before* 1948-49 and did not avail their earned leave before 31st March 1949 are entitled to get leave according to the provisions of Section 79 of the new Factories Act 1948 i.e. at the rate of one day for every 20 days' service in case of an adult and one day for every 15 days' service in the case of a child.

(2) The workers who have completed a period of four months service on or after 1st April 1949 and if their services are terminated, they are entitled to payment in lieu of proportionate leave to them. This is equally applicable to seasonal sugar factory's employees as well, since there is no distinction of seasonal or unseasonal concerns under the Factories Act, 1948".

This award of the Board was affirmed on appeal by the Industrial Court which further observed that "there is no indication therein (Namely Act of 1948) that the period of twelve months' continuous service in a factory is to be reckoned *from the date* on which the Act came into force." Thus the question of retrospective operation of the Act of 1948 was considered by that Court but overruled. The Company has preferred this appeal before us.

I may at once say that the view expressed by the Chief Inspector of Factories on point (1) is wrong.

It is the common case that the Company's concern is a factory within the meaning of the Factories Act and that it was not a seasonal factory upto June 1948 at least. The Company, however, contended that the factory became a seasonal one from June 1948. On this point there is no finding either by the Board or the Industrial Court.

The factory legislation which are relevant to the questions in the appeal are the Factories Act, XXV of 1934 (hereafter called the Parent Act of 1934), its amendments by Act III of 1945, by which Chapter IV(a) was introduced into the Parent Act and the Factories Act, LXIII of 1948 (hereafter called the Act of 1948) which repealed the Act of 1934. This Act came into force on the 1st April, 1949.

There were no provisions for leave or holidays with pay on the basis of past service by a worker in the Parent Act of 1934. Such provisions were introduced by amending Act III of 1945. The Parent Act with the amendment will hereafter be called the Act of 1934.

Chapter IV(a) which was introduced by that Act consists of seven sections Section 49-A(1), and 49-B(1) and (3) are important.

Section 49-A(1) enacts that Chapter IV(a) would not apply to a seasonal factory. Section 49-B(1) and 49-B(3) run as follows :—

49-*B*(1).—"Every worker who had completed a period of 12 months continuous service in a factory shall be allowed during the subsequent period of twelve months, holiday for a period of ten days, or if a child, fourteen days ... etc."

49-*B*(3).—"If a worker entitled to holidays under sub-section (1) is discharged by his employer before he has been allowed the holidays, or if, having applied for and having been refused the holidays, he quits his employment before he has been allowed the holidays, the employer shall pay him the amount payable under Section 49-C in respect of the holidays."

Section 79(1) of the Act of 1948 and the second proviso thereto are material. They run as follows :—

*Section* 79(1)—"*Annual leave with wages.*—Every worker who has completed a period of twelve months' continuous service in a factory shall be allowed during the subsequent period of twelve months leave with wages for a number of days calculated at the rate of :—

(i) if an adult, one day for every twenty days of work performed by him during the previous period of twelve months subject to a minimum of ten days and

(ii) if a child, one day for every fifteen days of work performed by him during the previous period of twelve months subject to a minimum of fourteen days.

.....

Provided further that were the employment of a worker, who has completed a period of four months' continuous service in a factory is terminated before he has completed the period of twelve months' continuous service, he shall be deemed to have become entitled to leave for the number of days which bears to the number specified in this sub-section the same proportion as the period of his continuous service bears to the continuous service of twelve months and the occupier of the factory shall pay to him the amount payable under section 80 in respect of the leave to which he is deemed to have become entitled."

It is clear that in the matter of leave and contemplated in those sections of the Act of 1934, as also of the Act of 1948, the period of continuous service which would entitle a worker to leave, must be reckoned with reference to that particular workmen and so the "season" as observed by the factory is not material. This position has also been admitted before us by both parties. The wording of issue No. 2, therefore, is not quite happy.

Seeing that the Act of 1948, which repealed the Act of 1934, had come into force on the 1st April, 1949, the

question raised in this appeal has to be considered under the following heads :—

(1) workers whose period of continuous service of twelve months ended before the 1st April 1949 ;

(2) workers whose period of continuous service of twelve months ended on the 31st March, 1949 ;

(3) workers whose continuous service of twelve months ended on or after the 1st April, 1949 and

(4) workers whose services had been terminated.

Both parties, with our leave, proceeded to argue the case on the aforesaid basis and submitted their contentions regarding the question of retrospective operation of the Act of 1948.

Before I discuss the position of the above four categories of workers, I think it would be useful to notice the main similarities and differences of the two Acts. The points of similarity are :—

(1) that a period of continuous service for twelve months entitled the worker to leave ;

(2) that the leave earned can only be availed of in the succeeding period of twelve months.

The point of difference are :—

(1) under the Act of 1948 the amount of leave is more than that prescribed in the Act of 1934 ;

(2) that Act of 1948 prescribes a period of minimum leave which the Act of 1934 does not ; and

(3) that whereas under the Act of 1934 a discharged workman is entitled to compensation for leave already earned and which leave can only be earned only by continuous service for twelve months, under Act of 1948, he is entitled to proportionate compensation, if he had put in continuous service of less than twelve months but had completed four months continuous service or more.

I need not notice other points of similarity and difference between the two Acts, for they are not necessary for the points to be considered in the appeal.

It is thus clear that the right of a worker in the matter of leave under the Act of 1948 is greater than that under the Act of 1934. To put it in other words the burden of the obligation on the part of the employer is greater under the Act of 1948 than under the Act of 1934.

There is no provision in the Act of 1948 which either expressly or by necessary implication gives it retrospective effect. The general rule applied to the question of retrospective operation of a statute must govern the case. That rule has been formulated in standard text books on Interpretation of Statutes and have been clearly and concisely formulated by Banerjee J. who delivered on judgment of the Full Bench in Jogannad Singh Vs. Amritlal Sircar (I.L.R. 22 Cal. p. 767). He observed "that every Statute which impairs or takes away vested rights acquired under existing laws, or *creates a new obligation* or imposes a new duty..... *in respect of considerations already passed* must be presumed, out of respect to the legislature, to be intended not to have a retrospective operation". In a later passage he emphasized on the term obligation. I have italicised the passage which are material to this case. Thus a statute which creates a *new obligation* cannot be given retrospective operation. The same principle in my opinion would apply where the new statute has *increased* the burden of an obligation provided for by the old statute repealed by the new one.

According to the Act of 1934 the worker earns the leave the moment he puts in twelve months of continuous service. The obligation of the employer to grant leave with pay arises that very moment. The time during which that leave is or can be availed of by the worker cannot in my judgment either enlarge or curtail that obligation.

The view expressed by the Chief Inspector of Factories would lead to an anomalous position. For instance, if two adult workers, A & B. had completed their twelve months of continuous service on the same day, say the 2nd January, 1949, and both had worked for the full twelve months and one took leave on the 2nd March, 1949 and the other on the 2nd April, 1949 according to the clarification of that Officer, one would be entitled to get only ten days leave and the other about fifteen or sixteen days' leave.

My view, therefore, is that in the first two cases namely, where a worker had completed his twelve months service either on or before the 31st March, 1949, leave has to be calculated at the rate mentioned in the Act of 1934.

As leave is earned under those Acts not month by month of the service put in but on the *completion* of twelve months of continuous service no leave would be due to a worker under either of the Acts before he completes his twelve months service. Accordingly, the date of the completion of twelve months of service must be the determining factor. Hence in the case of workers whose twelve months serivce ends after the 31st March, 1949, leave has to be calculated in terms of the Act of 1948. The same considerations would apply in the case of a worker whose services had been terminated before twelve months' service where the minimum period of four months mentioned in the second proviso of Section 79 of the Act of 1948 oversteps the 31st March, 1949.

The award should be as follows :—

(1) Workers who had completed their twelve months' service on or before the 31st March, 1949, would be entitled to leave at the rate and according to the provisions of Chapter IVA of the Factories Act of 1934.

(2) those whose twelve months' service ended on or after the 1st April, 1949, would be entitled to get leave at the rate and according ta the provisions of Section 79 of the Factories Act 1948.

(3) workmen whose services had been terminated before twelve months of service would be entitled to compensation in terms of the proviso 2 of section 79 of the Factories Act of 1948, if the minimum period of four months mentioned therein oversteps the 31st March, 1949, and I decide accordingly.

As we have differed in our conclusions, I refer the whole appeal to the Chairman under Section 9 clause (8) of the Industrial Disputes (Appellate Tribunal) Act, 1950.

R. C. MITTER,
*President.*
19-1-1951.

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Appeal No. 141 of 1950

The Lakshmiji Sugar Mills Co. Ltd. Maholi — Appellants.

*Versus*

The Mazdoor Sangh, Maholi. — Respondents.

In the matter of an appeal against the decision of the Industrial Court (Sugar), Lucknow, made on 19th August 1950 in appeal No. 40 of 1950 in respect of an Industrial dispute between the Lakshmiji Sugar Mills Co. Ltd., Maholi and its Mazdoor Sangh.

*Dated the 4th December 1950*

*Present*

R. C. Mitter, Kt. President,

Mr. G. P. Mathur, Member.

*Appearances :*

For the Appellants.

Mr. H. S. Brar, Labour Officer.

For the Respondents.

Mr. H. N. Bahuguna, General Secy. I.N.T.U.C., Uttar Pradesh.

*State.*—Uttar Pradesh.

*Industry.*—Sugar.

DECISION

The appeal relates only to Issue No. 2, as framed by the Regional Conciliation Board (Sugar), Lucknow, and which was couched in the following words "whether the employees are entitled to leave with pay for the seasons 1947-48 and 1948-49".

The Mazdoor Sangh on behalf of the employees demanded that their leave account should be credited with leave pay, which they earned for the seasons 1947-48 and 1948-49 ; while the management of the Lakshmi Sugar Mills contended that according to section 49A of the Factories Act, 1934 (as amended by Act III of 1945), Chapter IV-A dealing with holidays with pay, did not apply to them, theirs being a seasonal factory ever since they closed their confectionery section (some times in June, 1948) and, therefore, no leave with pay accrued to the employees either in the season of 1947-48 or 1948-49.

The rejoinder of the Mazdoor Sangh was that in the Factories Act 53 of 1948, which repealed the former Act 35 of 1934, seasonal factories were not exempted from the liability to grant leave with wages and, therefore, even if the Lakshmiji Sugar Mills is taken to be a seasonal factory, the employees were entitled to be credited with leave after 1st April 1949 according to section 79 of new Factories Act, 53 of 1948.

So far the matter in issue was quite clear, but a great deal of complication was introduced on account of the learned President of the Industrial Court adopting the interpretation put by the Chief Inspector of the Factories. It appears that the Mazdoor Sangh has sought the opinion of the Chief Inspector of Factories about this dispute and he expressed it in the following words :

"With reference to your letter No. M.S. 794 dated the 12th July 1949 I have the honour to inform you that the workers who had completed their 12 months services before 1st April 1949 (the date when the new Factories Act came into force) and did not avail their earned leave before 31st March 1949 are entitled to get leave according to the provisions of Sec. 79 of the New Factories Act 1948, i.e. at the rate of one day for every 20 days' service in case of adults and 1/15 in case of child. The workers who have completed a period of 4 months service on or after 1st April 1949, and if their service are terminated they are entitled to payment in lieu of proportionate leave with wages due to them. This is equally applicable to the seasonal Sugar Factory's employees as well since their is no distinction of seasonal or non-seasonal concern under Factories Act 1948".

The Industrial Court has confirmed the award of Regional Conciliation Board and it was in the following terms :—

"The Board decides that the above clarification given by the Chief Inspector of Factories should be given effect to by the management and arrears of leave or payment in lieu of it may be made to the workers concerned within a month of this order. If any other complication arises in this connection the parties feeling aggrieved may refer the cases to the Chief Inspector of Factories, whose clarification should be considered to be final and binding in the matter".

To say the least, this delegation of powers to the Chief Inspector of Factories is absolutely unwarranted and the award as it stands shall have to be reversed or modified.

At the hearing of the appeal a further complication was introduced by arguments being addressed on a point of law that was never raised before the Industrial Court and was not made a ground of appeal.

The grounds of appeal Nos. 3 and 4 are as follows :—

3. "That the Industrial Court proceeded on the wrong assumption of the law by giving retrospective effect to Section 79 of Factories Act.

4. That the Sugar Industry is a seasonal Industry and Sugar Factories are seasonal factories and that the Chapter in respect of holidays with wages of the Factories Act 1934 did not apply to Sugar Factories being seasonal."

It would be obvious on reading of the grounds of appeal that it was never contended that leave with pay, if admissible for the seasons 1947-48, 1948-49 should be calculated according to Factories Act 1934 and not according to Factories Act 1948. But at the time of arguments it was contended that Factories Act 1948 could not have a retrospective effect in this respect and, therefore, leave without pay for the seasons in question should have been calculated according to Factories Act, 1934.

I feel it my duty to point at this stage that although according to prevailing authorities question of law can be raised at any stage of litigation, that practice should not be permitted in this Tribunal where the parties are unequally matched. In the present appeal while the appellants were represented by Mr. Brar, a trained though not a practising lawyer, the Mazdoor Sangh was represented by Shri Sohai Lal a layman, who could hardly understand the intricacies of law and could not be expected to meet the authorities produced by Mr. Brar (namely, I.L.R. Cal. Vol. 22 p. 767 and Maxwell's Interpretation of Statutes) at a moment's notice.

My learned brother Sir R. C. Mitter, whose judgement I had the privilege to peruse, has practically given effect to this newly raised point of law. It is my misfortune to differ from him and, therefore, I proceed to lay down my reasons.

I would have been the last person to dissent if a matter of principle were not involved and I had not an honest apprehension that the award proposed by my learned brother is likely to be a fruitful source of disturbing the industrial peace by raising inumerable disputes between the employees and employers.

As I have already indicated in earlier part of my judgment such a subtle point of law should not have been allowed to be raised at this stage.

I am further of opinion that it is not the function of this Tribunal to go into intricacies of the law and to give effect to them. It has only to dispense natural or social justice unhampered by legal subtleties with the sole aim of promoting peace between employers and employees in industrial concerns.

In G.O. No. 781 L/XVIII dated March 10, 1948 issued by the Government of Uttar Pradesh we find a clause No. 14 which runs thus :—

"In an enquiry under the provisions of this order the Board or the Court shall not be bound to follow any rule or law of evidence". From this it would be clear that the original Courts have to adjudicate disputes unhampered by technical rules or law of evidence.

When the matter is brought to this Tribunal in appeal it would not be possible to enforce that rule or law which the original Court was authorized to disregard.

Coming now to the question whether the provisions of Section 79 of Factories Act of 1948 should be given retrospective effect or not, several considerations arise. (1) If it is held that Factories Act of 1948 cannot have a retrospective effect in that case, issue No. 2 shall have to be answered in the negative, as according to the appellant, the factory became a seasonal factory from June 1947 (which fact was not denied by the other party) and thus both the seasons 1947-48 and 1948-49 shall be governed by Section 49A of Factories Act and the workers shall not be entitled to any holidays with pay for those seasons. It is true that there is no finding in clear terms but it is so assumed as appears from the following recommendation of Chief Factories Inspector which has been adopted by the Tribunal.

"This is equally applicable to seasonal sugar factories employees as well, since there is no distinction of seasonal or unseasonal concerns under the Factories Act of 1948" If this aspect is overlooked, the proposed award would be self-contradictory in this way that while holding that Factory Act 1934 would be applicable for the purposes of calculating amount of leave earned; it is granted that Section 49A of the same Act which exempts seasonal factories from the operation of Chapter IV would not be applicable.

(2) With great respect of my learned brother, I am unable to agree that the present case falls within the general principles as propounded by Sir Guru Das Banerji for determining whether a statute should have retrospective effect or not, vide Jogendra Singh Vs. Amrit Lal Sircar (I.L.R. 22 Cal. p. 767). A short extract from that judgment is quoted below :—

"In the first place, to my mind the broad general proposition which this reasoning adopts as its major premise namely that a law creating a new right ought not to have retrospective effect is not universally true; but the rule against retrospective operation is intended to apply not so much to a law enacting a new right as to a law creating a new obligation or interfering with vested right. As the creation of a new right in one class of persons is generally attended with imposition of new obligation, or the interference with the vested rights of other classes, a law creating a new right would, in general, be subject to the rule against retrospective operation".

The workmen were entitled to a certain amount of leave with pay under Factories Act of 1934 and the very same right was continued to them under the factories Act of 1948 with this difference that the method of calculation was changed and under the new Act leave for about 14 days was made available as against 10 days under the old Act. This can hardly be said to be creating a *new right* or a corresponding new obligation or interfering with vested rights; and in my judgement, therefore the aforesaid proposition of law would not be applicable to Act of 1948, and it must be given a retrospective effect.

(3) According to first proviso to Section 79(2) "the total number of days of leave which may be carried forward to a succeeding period shall not exceed fifteen in the case of an adult or twenty in case of a child".

According to this proviso, if under the Factories Act of 1948, 15 days are allowed to an adult for the season 1947-48, they will be carried forward to 1948-49, and when another 15 days are allowed for 1948-49 not more than 15 days can be carried forward to the season 1949-50. Thus

there will be no appreciable increase in the amount of leave earned, and the new statute cannot be even said to have increased the obligation. There can be thus no bar to giving retrospective effect to the same.

I would, therefore, dismiss the appeal and modifying the award would hold that the employees are entitled to leave with pay for the seasons 1947-48 and 1948-49 according to the provisions of Act 53 of 1948.

My learned brother has proposed the following order:—

"The award shall be as follows:—

(1) workers who had completed their 12 months service on or before 31st March, 1949, would be entitled to leave at the rate and according to the provisions of Chapter IVA of Factories Act of 1934.

(2) those whose 12 months service ended on or after the 1st April, 1949, would be entitled to get leave at the rate and according to the provisions of Section 79 of the Factories Act of 1948.

(3) workers whose services had been terminated would be entitled to compensation in terms of proviso 2 of Section 79 of Factories Act, if the minimum period of 4 months mentioned therein oversteps the 31st March, 1949."

Even if the legal interpretation put by my learned brother be correct, if I may say so with great respect, the order proposed is highly inexpedient and undesirable. The workmen working in the same factory shall have to be treated differently in the matter of leave. Most of them would not be able to follow the niceties of law which resulted in this discrimination and would be disposed to quarrel with the management for allowing them shorter period of leave and every time an industrial dispute would be raised. Then the proposed order has mentioned only the dates when 12 month service would be completed in different cases and has not taken into consideration when they can and should begin. To give a concrete example, a workman employed on 1st April, 1947, would complete his 12 months on 31st March, 1948. But he can insist that his next 12 months should be counted from 2nd April 1948 and not from 1st April, 1948, so that he may come under clause (2) of the proposed award and have the advantage of Section 79 of Factories Act of 1948; as such he would be willing to give up one day's service for the purposes of calculation. Similarly clause (3) of the proposed award makes a discrimination between persons whose services were terminated on 31st March and those whose services were terminated only a day after that. This clause, to my mind tacitly accepts the principle that the Act of 1948 should have retrospective effect. According to this clause if a worker has completed four months continuous service on 1st April, 1949, he would be entitled to proportionate compensation as provided under Section 80 although he had put in 3 months and 29 days before Factories Act of 1948 came into force when there was no rule for awarding proportionate compensation for less than 12 months but more than 4 months service.

G. P. MATHUR,
*Member.*

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*Calcutta, the 1st September 1951*

**No. LA.6(2)/3138.**—The following decisions of the Calcutta Bench of the Tribunal are published for general information.

1. Appeal Nos. Cal-3,
Cal-4, Cal-5, Cal-13,
Cal-18, Cal-19, Cal-26,
and Cal-55—all of 1950.
2. Appeal No. 51 of 1950.

J. N. MAJUMDAR,
*Chairman,*
*Labour Appellate Tribunal of India.*

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**Appeals Nos. Cal-3, Cal-4, Cal-5, Cal, 13, Cal-18, Cal-19, Cal-26, and Cal-55 of 1950.**

Appeal No. Cal-3 of 1950

The Darbhanga Sugar Co. Ltd.,
(a) Lohat Sugar Factory, P.O. Lohat, Dist. Darbhanga,
(b) Sakri Sugar Factory, P.O. Sakri, Dist. Darbhanga. **Appellants.**

*Versus*

The workmen of the said Lohat Sugar Factory and Sakri Sugar Factory represented by:—
(a) Lohat Sugar Factory Labour Union, P.O. Lohat, Dist. Darbhanga.
(b) Sakri Sugar Factory Labour Union, P.O. Sakri, Dist. Darbhanga.
(c) Darbhanga Sugar Co. Ltd. Employees Assocn., P.O. Lohat, Dist Darbhanga. Respondents.

In the matter of an appeal against the award of Hon'ble Mr. Justice B. P. Sinha, Sole Member, Industrial Tribunal, dated 26th September, 1950 and published in the Bihar Gazette dated 5th October, 1950 in respect of an Industrial dispute between the Darbhanga Sugar Co. Ltd. and the Workmen employed under them, represented by Lohat Sugar Factory Labour Union and others.

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Appeal No. Cal-4 of 1950

Cawnpore Sugar Works Ltd.,
Marhowrah and others represented by Bihar Sugar Mills Association, Patna, Appellants.

*Versus*

The Riga Mills Workers Union, P.O. Righa (Muzaffarpur and other Trade Unions. Respondents.

In the matter of an appeal against the award of Hon'ble Mr. Justice B. P. Sinha, Sole Member, Industrial Tribunal dated 26th September, 1950 and published in the Bihar Gazette (Extraordinary) dated 5th October, 1950 in respect of an industrial dispute between Cawnpur Sugar Works Ltd. and others and the workmen employed under them represented by The Riga Mills Workers Union and other Trade Unions.

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Appeal No. Cal-5 of 1950

South Bihar Sugar Mills Ltd., Bihta, Patna and others represented by the Bihar Sugar Mill Association, Patna Appellants.

*Versus*

The South Bihar Sugar Mills Workers Union, Bihta, Patna and other Trade Unions. Respondents.

In the matter of an appeal against the award of the Hon'ble Mr. Justice B. P. Sinha, Sole Member, Industrial Tribunal dated 26th September, 1950 and published in the Behar Gazette dated 5th October, 1950 in respect of an Industrial dispute between South Behar Sugar Mills Ltd. and workmen employed under them represented by South Bihar Sugar Mills Workers Union, and others.

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Appeal No. Cal-13 of 1950

R. N. Pandey, workman of the Mohini Sugar Mills Ltd., Bikaramgunj, Shahabad, resident of Bikaramganj, Shahabad, C/o U.P. & Bihar Sugar Mills Workers' Federation, Pandariba, Lucknow (U.P.) Appellants.

*Versus*

The Mohini Sugar Mills Ltd., Bikaramgunj, Shahabad, Bihar. Respondents.

In the matter of an appeal against the award of Hon'ble Mr. Justice B. P. Sinha, Sole Member, Industrial Tribunal, dated 26th September, 19[illegible] and published in the Behar Gazette dated 5th October, 1950 in respect of an Industrial dispute between R. N. Pandey, workman of the Mohini Sugar Mills Ltd., Bikaramgunj and the management of the Mohini Sugar Mills.

Appeal No. Cal-18 of 1950

The Belsund Sugar Company Ltd., 14, Netaji Subhas Road, Calcutta. Appellants.

*Versus*

Its employees represented by the Riga Mill Workers' Union, P.O. Riga, Muzaffarpur Dist. Bihar. Respondents.

In the matter of an appeal against the award of Hon'ble Mr. Justice B. P. Sinha, Sole Member Industrial Tribunal dated 26th September, 1950 and published in the Behar Gazette dated 5th October 1950 in respect of an industrial dispute between The Belsund Sugar Co. Ltd. and its employees represented by the Riga Mill Workers' Union.

Appeal No. Cal-19 of 1950

The Motilall Padampat Sugar Mills Co. Ltd., Majhaulia, Champaran, Bihar, through Shri Indra Narain Nigam, Secretary, Kamla Towar, Kanpur Uttar Pradesh. Appellants.

*Versus*

The Majhaulia Sugar Mills Labour Union, Majhaulia, Champaran, Bihar, on behalf of workmen, through Shri Hasuila Prasad, President, P.O. Majhaulia, Champaran, Bihar. Respondents.

In the matter of an appeal against the award of Hon'ble Mr. Justice B. P. Sinha, Sole Member, Industrial Tribunal and published in the Behar Gazette dated 5th October 1950 in respect of an industrial dispute between The Motilal Padampat Sugar Mills Co. Ltd., Majhaulia, and The Majhaulia Sugar Mills Labour Union, Majhaulia.

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Appeal No. Cal-26 of 1950

Ganga Devi Sugar Mills Ltd., Bagaha, P.O. Naraipur, Dist. Champaran. Appellants.

*Versus*

Ganga Devi Sugar Mill Workers' Union, Bagaha, P.O. Naraipur, Dist. Champaran and others. Respondents.

In the matter of an appeal against the award of Hon'ble Mr. Justice B. P. Sinha, Sole Member, Industrial Tribunal and published in the Behar Gazette dated 5th October, 1950 in respect of an industrial dispute between Ganga Devi Sugar Mills Ltd., Bagaha, P.O. Naraipur, Dist. Champaran and Ganga Devi Sugar Mill Workers' Union, Bagaha P.O. Naraipur, Dist. Champaran and others.

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Appeal No. Cal-55 of 1950

South Behar Sugar Mills Labour Union & others thro : President Behar Provincial Sugar Federation, Patna. Appellants.

*Versus*

South Behar Sugar Mills Ltd. & others Respondents.

In the matter of an appeal against the award of Hon'ble Mr. Justice B. P. Sinha, Sole Member, Industrial Tribunal dated 26th September, 1950 and published in the Behar Gazette dated 5th October 1950, in respect of an industrial dispute between South Behar Sugar Mills Labour Union and others and South Behar Sugar Mills Ltd. and others.

*Present*

Mr. J. N. Majumdar, Chairman.

R. C. Mitter, Kt. Member.

Mr. G. P. Mathur, Member.

*Dated the 7th March* 1951

*Appearances* :

Appeals No. Cal-3, Cal-4, Cal-5, Cal-13, Cal-18, Cal-19, Cal-26, and Cal-55 of 1950.

For the Employers.—

Mr. B. P. Khaitan with Mr. P. D. Himmatsinka and Mr. W. F. Malden.

For the Employees.—

Mr. Romen Roy, President, Motipur, Sugar Factory Union,

Thakur Jugal Kishore Singh, President Provincial Sugar Labour Federation,

Mr. Kasi Nath Pandey, Secretary, Indian Sugar Mills Workers' Federation,

Mr. Bagaram Tulpule and Brijkishore of U.P. and Behar Sugar Workers' Federation,

Mr. Kedar Nath Pandey, Organizing Secretary, Indian National Sugar Mill Workers' Federation.

*State*.—Behar.

*Industry*.—Sugar.

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1. By an order dated the 6th February, 1950, made under Section 7 of the Industrial Disputes Act, XIV of 1947 (hereafter called the Act) the Behar Government constituted an Industrial Tribunal (hereafter called the Tribunal) with The Hon'ble Mr. Justice B. P. Sinha as the sole Member and under Section 10 of the Act referred to it the following disputes for adjudication, namely :—

(1)(a) The bonus payable, if any, by the Sugar factories in the State of Behar to their workmen for the crushing season of 1948-49 ; and

(1) (b) readjustments necessary, if any, in the amount of bonus paid in the crushing season, 1947-48.

(2) Sick leave, casual leave, festival holidays and other leave, if any, to be given to the workmen of the sugar factories during a calendar year.

(3) The retaining allowance for the off-season to be paid, if any.

(4) Conditions of service of the workmen employed in the sugar factories in Behar.

In Appendices I and II of the order the names of thirty sugar factories and of fortyfive Labour Unions were mentioned as parties.

2. The question of bonus for the crushing season, 1947-48, formed the subject matter of an earlier adjudication by another Industrial Tribunal constituted under Section 7 of the Act of which Mr. Shewpujan Rai was the sole Member. Mr. Rai made two interim awards and a final award on the 19th December, 1948, 6th April, 1949 and 20th November, 1949 respectively. Those awards were declared to be binding by the Behar Government under Section 15(2) of the Act, and remained in operation for a period ending on the 18th December, 1949, by virtue of an order made under Section 19(3) of the Act.

3. The Tribunal made its award on the 26th September, 1950. It was published in the Behar Gazette with a notification dated the 5th October, 1950. The material findings of the Tribunal on the issue are as follows :—

I. *Re* : *Bonus for the crushing season* 1947-48 :

(i) that the Tribunal was not competent to question the power of the government to make the reference in this respect ;

(ii) that the final award of Mr. Shewpujan Rai precluded it from going into the *whole question of bonus* for the crushing season, 1947-48 ; but if it had not been so precluded it would have increased the amount of bonus for that season ;

(iii) that the terms of reference made by the Behar Government, however, gave it authority to consider only one limited question, namely, as to whether for that season bonus is to be awarded at the rates originally fixed by Mr. Shewpujan Rai in his first interim award ; and

(iv) that those original rates ought to be restored and the additional amounts that would thus be payable were to be paid by the employers to their employees in terms of and on the basis of Mr. Rai's award, both as regards the personnel and the amount.

II. *Re* : *Bonus for the year* 1948-49 :

(i) that the position of the industry in the two crushing seasons 1947-1948 and 1948-1949 was more or less the same ;

(ii) that bonus is to be awarded against the employers of those factories who had made profits in the said crushing season but not against those who had suffered loss ;

(iii) that all the employers did not produce balance sheets and other papers and did not supply the informations called for and that the Balance Sheets which had been produced were all unreliable ;

(iv) that such of the factories which according to figures appearing in the tables of the Tariff Board at pages 156-176 which had a crushing period of less than 80 days, or had crushed only 11 lacs maund of cane or less or had a recovery of ten per cent or less must be taken to have suffered loss and ought to be exempted from the payment of bonus. Accordingly, all the four sugar factories of South Behar and two sugar factories of North Behar, namely, the Indian Savan and Sitalpore concerns were exempted.

(v) that in respect of the remaining factories which must be taken to have made profits, the scale of bonus should be as follows :—

| Amount of cane crushed during the season | Rate of bonus per md. of sugar produced |
|---|---|
| (*a*) Over 11 lacs mds. and upto 18 lacs maunds .. | 0 6 0 annas |
| (*b*) Over 18 lacs and upto 20 lacs maunds .. | 0 8 0 ,, |
| (*c*) Over 20 lacs and upto 35 lacs maunds .. | 0 10 0 ,, |

(d) that bonus for that season should be paid by the factories made liable on the same basis as for the previous season (1947-1948) within a week of the publication of the award.

III. *Re* : *Leave and holidays* :

(i) that the question of compulsory leave was within the terms of reference, and that system should be abolished.

(ii) that the rule laid down in Section 79 of the factories Act should apply to all *permanent* employees whether they were "workers" within the meaning of that Act or not and sick leave for 14 days and casual leave for 12 days a year should be allowed to them ;

(iii) that seasonal workers should get besides the weekly holidays, 7 days' sick leave and further, if the crushing season be four months or more, leave according to the second proviso to Sec. 79 (1) of the Factories Act ;

(iv) that during the crushing season all should get one day's festival holiday for Holi and in case of Muslims one day each for Id-ul-Fitr, Id-uz-zoha, Shabe-barat, Muharram and Fatha-Duaz-Dahum, if they fell within the crushing season, and,

(v) that permanent workers would get in the off-season the other festival holidays mentioned in Appendix E of the award.

IV. *Re* : *Retaining allowance* :

(i) that skilled workmen and clerks should get at the rate of 50 per cent. of their wages during the off-season and semi-skilled ones at 25 per cent thereof ;

(ii) that unskilled workmen should not have any retaining allowance ;

(iii) that persons employed in jobs of the description mentioned in Nimbkar Report Part I at pages 245-246 were to be taken as skilled and semi-skilled workmen, as the case may be, for the purpose of retaining allowance ;

(iv) that no retaining allowance to the additional categories were to be paid for the past year's off-season ; and

(v) that retaining allowance of a previous off-season is to be paid in a lump at the beginning of the succeeding crushing season and after the seasonal workmen had joined.

V. *Re* : *Conditions of service* :

The Tribunal did not draw up a "Service Code" observing that disputes on conditions of service could properly be adjudicated upon only after Standing Orders had been certified under the Industrial Disputes (Standing Orders) Act.

4. Eight appeals have been preferred before us against this award, one by the Labour Unions (No. 55), one by a workman (No. 13), and the remaining six by the employers. Of those six, five are by individual employers, namely, Nos. 3, 5, 18, 19, and 26 and the remaining one No. 4 of 1950 by the remaining employers and by the appellants of No. 18, 19 and 26. The employers in appeal No. 4 are twenty in number.

5. The common grounds in the appeals filed by the employers cover the questions of bonus for the seasons 1947-1948 and 1948-1949, retaining allowance and leave, and the special ground in the appeals filed by the individual employers are that the Tribunal ought to have held that their factories had incurred loss in the season 1948-1949.

6. We will now formulate the contentions urged before us by the employers which are as follows :—

*Re* : *Bonus for the season* 1947-1948 :

(1) that the Tribunal had no jurisdiction to consider the question of bonus for the season 1947-1948, inasmuch as the Behar Government was not competent to refer that question over again for adjudication ;

(2) that even if the said Government was competent, the Tribunal was precluded from going into that question over again ;

(3) that at any rate the Tribunal ought not to have increased the amount of bonus awarded by Mr. Shewpujan Rai inasmuch as—

(a) the employees by accepting payment of bonus as awarded by Mr. Rai were precluded from claiming more, and,

(b) the employers had already made allotments of the surplus on the basis of Mr. Rai's award.

*Re* : *Bonus for the season* 1948-1949 :

(4) that the question of bonus should have been considered not on industry-wise but on unit-wise basis and the award should have been made accordingly ;

(5) that in determining the question as to whether there had been profit or loss in the working of a factory the balance sheets and profit and loss accounts which had been produced should not have been condemned *en block* ;

(6) that bonus should have been linked to net profits arrived at by setting apart from the gross profits depreciation, costs of replacement and rehabilitation of the plant and machinery, the previous losses, if any, a fair amount towards reserves and a fair return to capital ;

(7) that at any rate the formula adopted by the Tribunal is wrong, inasmuch as many relevant factors, namely, crushing capacity, the general lower recovery than the estimated figure, and increase of wages in the season, had not been taken into account ;

(8) that the Tribunal ought not to have based its award on rates fixed for Uttar Pradesh Government for the previous year 1947-1948, inasmuch as—

(a) that price of sugar for the year 1948-1949 was much lower than that of the previous year 1947-1948 ;

(b) the wages for the year were higher than that of the previous year ;

(c) the conditions of the Behar Sugar Industry were less favourable than that of the Uttar Pradesh Industry, and,

(d) the slabs have been fixed without due consideration.

7. In appeal No. 55 preferred on behalf of the Labour Unions, the contentions are :—

(i) that the Tribunal had misunderstood the scope of the reference respecting the bonus for the season 1947-1948, and it should have awarded more bonus for that year ;

(ii) that a larger amount of bonus for the season 1948-1949 should have been awarded inasmuch as the factories had made much larger profits than what had been estimated when the price of sugar was agreed upon before the crushing season had begun ;

(iii) that the four South Behar Factories ought to have also been made liable for bonus for the season 1948-1949 ; and

(iv) all the complaints made under section 33A of the act ought to have disposed of by the tribunal.

The appeal is not pressed in regard to the two North Behar Factories exempted by the Tribunal.

8. We will in the first instance deal with the questions raised by the parties which relate to bonus and will thereafter enumerate and deal with their contentions which relate to leave, retaining allowance and conditions of service.

9. Leaving out the case of apprehended dispute, which does not concern us in these appeals, it is apparent that the appropriate Government is competent to make a reference under Section 10 of the Act, if before the reference (1) the dispute in fact had arisen ; (2) that that dispute is an industrial dispute ; and, (3) that the appropriate government when making the reference had applied its mind to the subject matter of the reference. If either of those three conditions be absent the reference would be bad and the proceedings may be quashed or the Tribunal to which the reference had been made would not be entitled to proceed on the reference. This would follow from what has been said by the Madras High Court in the case of Kundan Textiles Mills Ltd.—*Vs.*—The Industrial Tribunal, Indian Factories Journal (Report) 217 s.c. 1949, Labour Law Journal p. 584, and by the All India Industrial Tribunal (Bank Disputes), Bombay (Extra-ordinary Gazette, Government of India, dated August 12, 1950 at pages 180). Within these narrow limits only the competency of the appropriate Government making the particular reference can, in our opinion, be questioned before a Tribunal constituted under Section 7. It is the reference made under section 10 of the Act which confers jurisdiction on the Tribunal and it is a sound principle of law, which we think should be applied in the field of industrial disputes, that when a

question relating to jurisdiction is raised before an authority, be it a judicial or quasi-judicial one, that authority is not only competent but is bound to decide that question. (Mayor of London—*Vs*—Cox 1867 L.R.2 H.L. 239 at 261, 263. Budh Singh Dhudhuria—*Vs*—Nirabardhan Roy C.L.J. 431 at 437).

10. The contention of the employers before us is that the Behar Government was not competent to refer the question of bonus for the season 1947-1948 over again, because the final award of Mr. Shewpujan Rai in respect thereto had settled that dispute and so it *must be taken* that there was no longer an existing dispute in relation thereto at or before the time of the reference to the Tribunal. This in substance raises the second point urged before us by the employers which we will consider in the following paragraphs. But we may say at once that in considering the competency of the appropriate government to make a reference no fiction is to be introduced. If *in fact* an industrial dispute existed at the time and that was brought to the notice of and was considered by the appropriate Government, which made the reference, the reference cannot be thrown out on the ground of incompetency. It would, however, be for the Tribunal to consider whether the dispute thus referred could, in law, be reagitated before it or not, and if it comes to the conclusion that it can, it must give its decision in favour of one party or the other on the merits of the controversy. In this case shortly after the operation of the award of Mr. Rai, as notified under Section 19 (3), had been over, strike notices had been served by the Labour Unions in which a claim for more bonus for that season, 1947-1948, was made but was resisted by the employers. So an Industrial dispute in fact existed in respect thereto and the Behar Government had been apprised of it The reference made thereafter under Section 10 of the Act to the Tribunal in this respect was, therefore, competent. The real and substantial question on this part of the case is whether the Tribunal was right in reconsidering on the merits the final award of Mr. Shewpujan Rai.

11. The employers' contention is that the Tribunal could not in law reconsider even to a limited extent the final award given by Mr. Rai as (i) the provisions of the Industrial Disputes Act operated as a bar, and (ii) in any case, by reason of the rule of *res judicata*, which ought to be applied to awards given in industrial disputes. The employees while controverting those propositions, on the other hand, have urged that by reason of the provisions of the said Act an award loses all force and validity on the expiry of the period of its operation as fixed under Section 19(3) or under the proviso thereto, as the case may be. We will deal now with their respective contentions based on the provisions of the Industrial Disputes Act together, and thereafter with the general question of the applicability of the rule of *res judicata* to awards made an industrial disputes.

12. These contentions must be judged by the provisions of the Industrial Disputes Act as it stood before its amendment by Act XLVIII of 1950, as Mr. Rai's award was given and published before the last mentioned Act had come into force. Sections 15(2), 15(4) and 19(3) and the proviso thereto are the relevant sections.

13. The arguments advanced on behalf of the employers are as follows :—

> That an award declared to be binding under Section 15(2) is binding for all times to come and that this is indicated by Section 15(4) and the proviso to Section 19(3) which, according to them, provides the only way in which the effect of an award declared to be binding by the appropriate government can be modified. The employees on the other hand rely upon Section 19(3) and the proviso thereto and say that after the expiry of the "period of operation" fixed thereby the award washes itself out, leaving it open to a tribunal on a reference made under Section 10 after the expiry of the said period to go again into the questions dealt with by the previous award on the footing that a fresh dispute had arisen.

14. In our judgment the effect of Section 15(4) is not what is contended for by the employers. It is prohibitory enactment of the usual kind made where a special authority is constituted with defined judicial or quasi-judicial functions, the object being to prevent an attack in civil courts or by other external authorities on the correctness of its decisions. It does not necessarily lead to the conclusion that an award on a particular subject is to have an everlasting effect. Further, from their very nature, Sections 15(2) and 19(3) must be read together and the enactment in the proviso thereto has not that effect which an independent enactment would have, but like all provisos has the effect of qualifying only the main enactment contained in that sub-section, namely 19(3). It only empowers the appropriate government to make a reference to a Tribunal for cutting short the period of operation of an award already fixed by the government if in its opinion there has been change of circumstances, and enables the tribunal to do so, if it thinks fit. It carries no further implication, namely, that in no other manner or on no other ground the effect of an award declared to be binding can be modified or nullified by the award *of a later Tribunal*. The combined effect of Section 15(2) and Section 19(3) and of its proviso, in case an order under the proviso had been made, is that an award would be binding for the period of its operations", and accordingly, the rights and liabilities which are the subject matter of the adjudication would be regulated by terms of the award during the period of its operation. Thus the *positive aspect* of an award is defined. What would happen to rights and liabilities dealt with in the award after the expiry of "period of operation" is however, a different question which we will discuss hereafter. We cannot, therefore, accept the contention of the employers based on the provisions of the Act.

15. Whether the rights and liabilities flowing from an award would ensure beyond the "period of its operation" as fixed by Section 19(3) or its proviso, as the case may be, is however, a different question. Possibly the nature of the rights or obligations—continuing or otherwise dealt with by the award or the time of their accrual may be matters for consideration. (Judhistir Adak Vs. P. R. Mukerjee, 54 CWN 222 sc. AIR 1950 Cal. 577). But we need not discuss the matter further in the view we are taking.

16. In several awards beginning from Divatia J's given in the Bombay Electric Supply and Tramways Ltd. Vs. Its non-scheduled employees (Extra-ordinary Gazette, Bombay, dated the 27th November, 1947, page 4507 at 4509) different views have been expressed on the question of finality of an award of an Industrial Tribunal on general principles. Those views may be summarised as follows:—

(i) that the rule of *res judicata* should be applied to awards given in respect of industrial disputes when facts and circumstances existing at the time of the prior award continue to remain the same (per Mr. Jeejeebhoy in Tinplate Company of India Ltd. Goltnuri, 1949, Lab. L.J. 392).

(ii) that the rule of *res judicata* should not be applied, but on the principle that one Industrial Tribunal should not sit in judgment over an award of another Tribunal the prior award is not to be disturbed unless there has been a change of circumstances since the prior award, and this is to be regarded as rule of law. (Divatia J., in Bombay Electricity Supply & Tramways Ltd.).

(iii) that the rule of *res judicata* should not be applied to industrial disputes and that the rule that a prior award should not ordinarily be disturbed is not a rule of law but a rule of prudence only (per Shri I. G. Thakore in Greaves Cotton & Co. Ltd., 1950, 2 Lab. L.J. 1152);

(iv) that the rule of *res judicata* should not be applied where there are obvious errors, anomalies and omissions in a prior award, or even where there are elements of hardship. In such cases the whole position can and ought to be reconsidered (per Mr. Modak in Corporation of Calcutta's case, 1950, 2 Lab. L.J. 788).

17. We do not propose to notice all the decisions of the Industrial Tribunals on the subject. Nearly all of them have been noticed and critically examined by Mr. Thakore in Greaves Cotton & Co. Ltd., and in Standard Vacuum Oil Co., Bombay, (1951, 1 Lab. L.J. 50).

18. None of the decisions go to the length of applying the rule of *res judicata* as understood in civil law. That rule is that a decision on a matter directly and substantially *in issue* by a court of competent jurisdiction is binding on the parties and their representatives for *all times to come* and cannot be reagitated by any of them or their representatives before another court of co-ordinate or inferior jurisdiction. The case of change in circumstances since the prior decision has no place in that rule as applied by civil courts. Apart from this, we are of opinion that that rule should not be applied to industrial disputes for it may, and in most cases would, come into conflict with the fundamental concept, namely, maintenance of industrial peace and promotion of harmonius relations between capital and labour with a view to achieve greater production. The relations between labour and capital must be regulated from time to time to attain those objects. In view of the provisions of Section 18 of the Act the rule of *res judicata* as known to civil law, if applied to industrial disputes would lead to stagnation and a feeling of frustration and so would create more unrest in the industrial sphere. In fact, it has been observed by a high authority "that principles of civil law concerning finality can be applied only after careful adaptation to the special needs

of this branch of law" (I.L.O. publication on "Conciliation and Arbitration in Industrial Disputes"). The rule of the *res judicata* should not therefore be applied to industrial disputes.

19. The power to grant review is not inherent in judicial or quasi-judicial bodies. It must be expressly conferred by Statute (Lala Prayag Lal Vs. Jai Narayan Singh I.L.R. 22 Cal. 419 at 424; Baijnath Goenka Vs. Nand Kumar Singh 6 C.L.J. 84 at 87). It has been conceded before us by both parties that an Industrial Tribunal constituted under Section 7 of the Act (XIV of 1947) has not the power of reviewing its award, even where there are mistakes, anomalies or errors appearing on the face of the record or of the award, or even if there are other grounds which would have been considered to be good grounds for review of judgment of a civil court. It is, therefore, just and proper in such cases to allow reconsideration of the award by a later award made on a new reference, otherwise there would be no way to remove them, and cases may also occur where the prior award could not be worked out satisfactorily. To hold otherwise would be to perpetuate mistakes, anomalies and errors and this is very undesirable in the field of industrial relations.

We, therefore, think that that rule should be that a prior award can and ought to be reconsidered in a later award made on a new reference if there are mistakes, anomalies or errors in the prior award or if other grounds are established which could be regarded as good grounds for reconsideration of a judgment pronounced by a Civil Court.

20. In the first interim award dated the 19th December, 1948, Mr. Rai recognised the position that to some extent the Behar sugar factories were in less favourable position than the Western Uttar Pradesh factories. At the same time he observed that the position of the Behar factories was on the whole, more favourable than the factories of Eastern Uttar Pradesh. Taking both these two factors into consideration he directed that *for the time being* and by way of interim relief that Behar factories should pay half the amount that may be found on a calculation made on the scale fixed by the Uttar Pradesh Government for Uttar Pradesh factories within a fortnight of the publication of his interim award. He also adverted to the fact that the Uttar Pradesh factories, had promised to pay subsidy to Behar factories at the rate of annas six per maund of sugar for the purpose of equalising profits and observed that he would take that fact into consideration, if the subsidy promised be not paid eventually, and also other factors at the time of making his final award. In the final award, however, he omitted to consider them. This, in our opinion, is an error which appears on the face of the record and would have been a good ground for review of a judgment of a Civil Court.

21. On the 9th February, 1949, the Uttar Pradesh Government by another order reduced the scale of bonus originally fixed by it by one anna per maund of sugar produced, subject to certain exceptions, which are not material for the case before us. In April following Mr. Rai took up for consideration the question of further payment by way of interim relief. The labour unions urged before him that the reduced scale fixed by the Uttar Pradesh Government should not be accepted and urged three reasons in support of their contentions. Mr. Rai apparently was prepared to agree to those contentions, for he observed that he was inclined to fix the amount to be paid then at the original scale and not at the reduced scale. He thus recognised the fact that the scales fixed for the Uttar Pradesh factories should not be followed as a matter of course. At the time of the argument, however, Mr. Sukla, appearing for the employers, filed a long note showing that the Behar factories had not made enough profit to enable them to pay anything more by way of interim relief. In fact, that note showed that by the payment as directed by the first interim award not only the whole of the profits had been eaten up but the employers were out of pocket to the extent of about seven lacs of rupees. The labour unions naturally challenged the accuracy of the figures appearing in that note. Mr. Rai observed that those figures deserved close examination after labour had had the opportunity to meet the points raised in that note. In the final award, however, he omitted to consider the matter. The labour unions have rightly taken up the stand that if he had taken up the matter at the time of the final award they would have not only demolished the figures appearing in that note but would have established that greater profits had been made by the industry to justify the award of bonus on a higher scale. This omission, is, in our opinion, also a material error which appears on the face of the record.

22. There is also another ground which supports the employee's case. The controlled price of D24 quality of sugar in the previous season was Rs. 20-14-0 per maund for the season 1947-1948. The price agreed upon at a meeting of The Jt. Sugar Control Board was Rs. 35-7-0 per maund and the price of cane was raised from Re. 1/4/- to Rs. 2/- a maund. Taking recovery roughly at 10 per cent. Rs. 7/8/- would be increased estimated cost of production of a maund of sugar in the season 1947-1948 on account of the rise in cane price and other costs would be increased by about Re. 1/4/- per maund. Thus there would be an extra profit of Rs. 5-8-0 per maund on the stock of sugar carried over from the previous year (Tariff Board Report p. 102). The total amount of profits would thus depend upon the quantity carried over from the previous year. The quantity thus carried over was not known when Mr. Rai made his final award and circumstances show that with due diligence the labour unions could not have discovered the same. The figures were for the first time collected by the Tariff Board and its report was published on the 6th March, 1950, some months after Mr. Rai's final award. This also would have been a good ground for review of judgement of a civil court. We accordingly hold that the question of the adequacy of the bonus awarded by Mr. Rai by his final award could be reconsidered on a fresh reference made under Section 10 of the Act. To what extent the bonus for that season can be revised is a question which would depend upon the scope of the reference made by the government. This would again depend upon the interpretation of the second part of reference No. 1 which we have mentioned under head 1(b). That matter we will decide later on.

23. We would now consider the two other points urged before us on behalf of the employers against the reopening of Mr. Rai's final award, namely, the points raised on grounds (3a) and (3b) as stated above. We may at once say that we cannot give effect to them. No doubt the employees accepted the two instalments of bonus directed to be paid by the first and second interim awards in which the question as to what would be the final scale of bonus was expressly reserved. Those payments were made and accepted before the final award was made. In fact, after the final award nothing more was payable under the final award, as the final award proceeded on the basis of the second interim award. On the other point there is in the first place no evidence that the employers had made final allocation of the surplus on the basis of Mr. Rai's final award before this dispute was raised and even if it be assumed that they had done so, we do not see how the employees are precluded, if they are otherwise entitled, from having that award reconsidered. There can be no scope for estoppel on the facts.

24. The finding of the Tribunal is that if the *whole question of bonus* for the season 1947-1948 could have been reopened before it, bonus at a higher scale than the original scale fixed by the Uttar Pradesh Government would have been awarded as the profits were large. This finding has not been seriously challenged before us by the employers and in fact, it could not have been successfully challenged in view of paragraph 44 of the report of the Court of Enquiry of which Mr. Justice Bind Basini Prasad was the sole member. No doubt his enquiry was in respect of the Uttar Pradesh factories, but his report gives a general picture of the profits made by the Uttar Pradesh and the Behar factories in the year 1947-1948. Mr. Justice Bind Basini Prasad's findings are not conclusive but must carry great weight. Relying upon the finding of the Tribunal the labour unions claim more bonus for the season 1947-1948. We have, therefore, to examine the scope of reference.

25. As we have already stated the Tribunal held that it had power to consider the question only to a limited extent, namely, whether the original scale fixed by the Uttar Pradesh Government should be restored or not. We think that this interpretation of the second part of reference numbered as 1(b) by us is correct. The word "readjustment" carries that meaning. If the intention of the Government had been otherwise words such as "review", "reconsider", "reopen" would have been used. The intention is to be gathered from the language used in the reference and oral evidence on the point is not admissible, at least of not much weight.

26. The question of bonus for the season 1948-1949 has now to be considered.

27. We cannot accept the contention of the employers that the Tribunal should have dealt with the question unitwise. The first difficulty in their way is that this question was not raised before the Tribunal. In fact, in the statement filed on behalf of the employers a definite stand on this line was not taken (paragraph 8 of Annexure E). But apart from this we do not think that this contention should be given effect to. The Sugar Industry in Behar is an established industry and, therefore, standardisation of the conditions of labour and of the industry as a whole, if not necessary, is at least desirable. In fact, all factors which enter into the cost of production have been standardized for each year by awards or otherwise, *e.g.*,

wage scale, price of cane, etc., and price of sugar produced by all the factories in the periods of decontrol have been fixed by agreement with the industry. For the crushing season 1947-1948, the question of bonus was not considered and determined on unitwise basis for determining the formula and for fixing the scale of bonus. We think that the conditions of labour employed in the Sugar factories of Behar should be as far as possible, uniform and this should be attained only if the same wage scale, and the same scale of bonus be adopted for all the factories which had made profits. Thus the correct principle to adopt would be to entertain a collective claim from labour and to adopt a uniform scale of bonus, where it is shown that the industry as a whole is able to pay, leaving it to a particular unit to escape the liability by positively proving loss. For this purpose, the balance sheet of the particular unit, *if reliable*, ought to have great value.

28. The next general question which has been raised before us by the employers is that in the industry bonus should be linked with profits and that the formula laid down in the case of the Mill Owners Association, Bombay, *Vs.* Rashtriya Mill Mazdoor Sangha (1950, 2 Lab. L. J. p. 1247) should be adopted with the addition that a sum equivalent to losses incurred in past years should be set apart from the gross profits. This argument is no doubt attractive but has to be carefully examined in relation to the sugar industry of Behar and of Uttar Pradesh.

29. Before 1946, the rule of linking bonus with profits was followed. In 1947, the formula on which bonus was to be awarded in respect of this industry was referred to the Bhattia Committee. That Committee recommended that 25 per cent. of the net profits of the season should be paid as bonus for the season 1946-47. (Note of the activities of U.P. Government for the amelioration of working and living condition of Labour 1946-47). Thereafter, if not from before, many factories suppressed their profits. In fact there was an award where bonus was claimed against four of the factories concerned in this appeal, namely, the Sasamusa Sugar Works, S. K. G. Sugar Ltd., the Vishnu Sugar Mills, and the Indian Sugar Works, Saran, in which it was found that it had become a practice with the employers of sugar factories not to submit correct accounts since the rule of linking bonus to profits was authoritatively laid down (Award of Shri S. N. Mukherjee, Extraordinary Behar Gazette, dated 5th August, 1947). As labour would not accept the correctness of balance sheets for the purpose of bonus a Tripartite Conference was arranged by the Uttar Pradesh Government. In that conference the following parties took part, namely, the representatives of that Government, the Sugar Syndicate which had representatives of both the Uttar Pradesh and Behar Industry, and the United Provinces and Behar Sugar Mills Workers' Federation. An agreement was arrived on 10th January, 1948, for payment of *production* bonus at certain rates per maund of sugar produced depending upon the amount of cane crushed, if the crush exceeded 10 lacs maund. (Press Communique, dated Lucknow, January 29, 1948—Note on Activities of the U.P. Govt. for the Amelioration of the Working and Living Conditions of Labour 1946-1947 at page 65—also evidence of J. S. Mehta, Secretary, Indian Sugar Mills Association). For the crushing season 1947-1948, bonus was accordingly claimed on production basis and was awarded on that basis without any objection from the employers. We will point out at the proper place that malpractices on an extensive scale have crept in and a large number of balance sheets and profit and loss accounts produced in this case are either not helpful or unreliable. As the real profit or loss can only be ascertained from reliable balance sheets, or reliable profit and loss accounts the rule of linking bonus with profit cannot be adopted where no reliance can be placed on a large number or even an appreciable number of balance sheets and profit and loss accounts.

30. Of the 30 factories involved in this appeal, 16 factories submitted their balance sheets in time and four at a late stage of the case. Seven factories namely (i) the South Behar Mills, (ii) the Gaya Sugar Mills Guraru (iii) Rhotas Industries, Dalmianagar (iv) the Vishnu Sugar Mills, Harakhua, (v) Indian Sugar Works, Saran, (vi) Sasamusa Sugar Works, Sasamusa and (vii) Belsund Sugar Mills, Riga, did not submit balance sheets but provisional Profit and Loss Accounts, and the remaining three factories, namely the Sagauli Sugar Works, Harinagar Sugar Mills and Ganga Devi Sugar Mills Bagaha, did not submit either balance sheets or provisional profit and loss accounts. In fact the last mentioned concern did not file any paper or supply any information on the points required by the Tribunal. The Tribunal examined in detail the balance sheets of the two SKG Mills and for good reasons, which we need not repeat, characterised them as cooked. A general observation was, however, made that all the balance sheets produced were unreliable without examining the balance sheets of any other concern. This we think, is not right. At least some more balance sheets should have been considered. The profit and loss account of Belsund Sugar Mills which showed loss was also considered and rejected after comparison with the conditions of another mill where important factors were almost similar. We will have to consider balance sheets and profit and loss accounts of some more factories before we can give our approval to those general observations of the Tribunal.

31. The balance sheets of five Mills, namely, the Sasamusa Sugar Mills, Vishnu Sugar Mills, the Indian Sugar Works, Saran, and the two S. K. G. Sugar Mills which had been produced to resist the claim for bonus for 1945-1946 had been found to be unreliable by Shri S. N. Mukherjee (Behar Gazette Extraordinary, dated 5th August 1947) and the finding was that to defeat the claim for bonus the reprehensible practice of suppressing profits had already been started in those concerns. It would accordingly be not safe to rely upon the Provisional Profit and Loss Accounts of those five factories, and in view of the damaging statements made by Shri L. L. Chowdhury, a witness examined on behalf of the Belsund Sugar Works, Riga, we cannot also rely upon the Profit and Loss Account produced by that concern.

32. There is another factor of general importance which has to be taken into account for assessing the value of balance sheets and profit and loss accounts. We have already stated that previous to 1946-47 bonus had been linked to profits and the Bhatia Committee recommended payment of bonus for 1946-1947 on that formula. Its report was published on 7th February, 1947. The following chart would speak for itself :—

A. *MOHINI MILLS* :

| | 1945-1946 | 1946-1947 | 1947-1948 | 1948-1949 |
|---|---|---|---|---|
| Production of sugar in maunds .. | 65,697 | 43,441 | 1,06,714 | 1,38,747 |
| Selling expenses, *e.g.*, commission to selling agents. | Rs. 1,428 | 3,698 | 40,295 | 1,04,781 |

Rise of selling costs per maund of sugar from 1945-1946 to 1948-1949 is enormous—about 10 times over the rate of 1945-1946.

B. *SITALPORE SUGAR WORKS* :

| | 1945-1946 | 1946-1947 | 1947-48 | 1948-1949 |
|---|---|---|---|---|
| Production of sugar in maunds .. | 1,06,137 | 99,482 | 1,12,207 | 82,851 |
| Selling expenses selling agents' commission. | Rs. 7,341 | 3,367 | 63,970 | 60,402 |

Rise of selling expenses per maund of sugar from 1945-1946 to 1948-1949 is enormous—about 12 times over the rate of 1945-1946.

C. *BELSUND SUGAR WORKS, RIGA* :

| | 1945-1946 | 1946-1947 | 1947-1948 | 1948-1949 |
|---|---|---|---|---|
| Production of sugar in maunds .. | 95,551 | 87,945 | 97,223 | 1,22,908 |
| Selling expenses or selling agents' Commission. | Rs. .. | .. | 14,051 | 23,958 |

Rise of selling costs per maund of sugar from nil in 1945-1946 to Rs. 23.958/- in 1948-1949, although the production of 1948-1949 was more by 27,457 maund only over the production of 1945-1946.

In such circumstances the balance sheets produced by the Sitlapore Sugar Works and the Mohini Mills cannot be relied upon and this would be an additional ground for rejecting the profit and loss account of the Belsund Sugar Works. The large increase in selling cost is a common feature of almost all the balance sheets. The balance sheets of four factories namely, of the Cawnpore Sugar Ltd., Works, Champaran Sugar Works, Ltd., Berrachakia, and Champatia, and of the New Sewan Sugar Factory, Ltd., are not helpful for they deal with various other activities of those companies besides production of sugar. We have thus dealt with the profit and loss account of the five out of the seven factories which have produced them and with the balance sheets of nine factories out of the nineteen which have produced them. In this state of things the balance sheets and profit and loss accounts are either not helpful or safe guides for determining the question as to whether the industry as a whole had made profits and to what extent We, therefore, think that it would be wrong to link bonus to profits and that it would be safer and right course to proceed on other data as has been done by the Tribunal.

33. We have already held that bonus cannot be linked with profits so far as this industry is concerned, and that

a uniform scale of bonus should be adopted and applied to such of the factories as had made or be presumed to have made profits which would enable them to bear the additional burden of bonus. In these circumstances the formula that should be adopted is to link bonus with production. We are further of opinion that the amount of sugar produced should not be the only criterion. As the average cost of sugar per maund produced would be dependent upon the quantity of cane crushed to produce it by reason of the percentage of recovery, the formula to be adopted must also be related to the amount of cane crushed. A graduated scale for bonus dependent on the total quantity of cane crushed, is therefore, proper and equitable, and this is the formula that has been adopted by the Tribunal. The formula as adopted by it has, however, been criticised by the employers on the ground that it is a defective one, as other material factors which would affect the cost of production have not been taken into consideration, such as the crushing capacity, percentage of recovery and the length of the actual crushing period. We may parenthetically observe that the percentage of recovery has been taken into consideration by the Tribunal. There cannot be any doubt that the other factors are material, for estimating the amount of profit per maund of sugar produced in view of the fact that the price of sugar was fixed by agreement, and on the supposition that that price was respected by the industry. There is reliable evidence relating to the crushing capacity and the actual quantity of cane crushed in all the cases before us except one. But the difficulty in this case is that there is no evidence which would enable us to estimate the reflection of the crushing capacity factor on the cost structure with any degree of precision. In fact, the Tribunal felt the necessity of expert assistance and suggested the appointment of an Assessor. The labour union accepted the suggestion but the employers opposed it. That being the position, we can only bear that factor in mind and proceed in a rough and ready manner. The general percentage of recovery is less by .16 than what was estimated at the time of fixation of the price of sugar. This would increase the estimated cost of production by requiring more cane, about 4 annas worth, for every maund of sugar produced. The quantity of cane crushed by the factories is generally speaking less than what their crushing capacity would have enabled them to crush. This, however, is a general feature of the industry, but this is also a factor for consideration. A magnified importance should not, however, be given to it. In this case only a few factories crushed cane in excess of its crushing capacity, some crushed the quantity almost equal to its crushing capacity but the majority crushed about 75 per cent. of their crushing capacity and a very few at a lower percentage. The crushing period fell short on an average by 1 day only of the estimated length of the crushing season. It can, therefore, for all practical purposes, be ignored, for its effect on the cost structure would be almost negligible.

34. The cost of labour and of supervision and other charges was estimated at Rs 6-0-10 (basic and additional) per maund of sugar on the basis of the minimum wages at Rs. 52-8-0 The actual minimum wages paid were, however, Rs. 55/-. According to the estimate at the price level of Rs. 28-8-0 per maund of D24 quality of sugar the profit was estimated to be Rs. 1-1-3 per maund. Within this was included income tax which was seven annas a rupee in the relevant year. So the net profits on those figures would be about 10 annas a maund on the average. By reason of the other factors stated above going into increase the cost of production to some extent, the net profits would be somewhat less than 10 annas a maund if sugar was actually sold at Rs. 28-8-0 per maund. But there is reliable evidence that from the very beginning of the crushing season even D24 quality of sugar was sold not at Rs. 28-8-0 but at Rs. 28-12-0 per maund, and about 60 per cent. of the sugar produced in these factories was E27 quality which was sold at that time at the rate of four annas more per maund. We proceed on the assumption as contended for by the employers that the cost of production of E27 quality was about three annas more than the cost of production of D24 quality. This would increase the profits by about one anna per maund Besides, excessive price was charged by arbitrarily upgrading the quality of sugar (Tariff Board Report p 105(c)) Thus the profits actually were more than what appeared in the estimate but what is more important and for which there is very reliable evidence that from about the time of sugar crisis which occurred in July 1949, the factories sold at much higher rates. The *Tariff Board* appointed in 1950 to enquire into the "sugar muddle" after an elaborate enquiry found that at that time the factories charged as much as Rs. 35/- a maund (p. 105 of the Report), the industry taking advantage of the favourable market then prevailing." I quote an expression used by one of the representatives the employers in the course of his argument. There is another piece of reliable evidence which shows that the average price for the season came to about Rs. 30/- per maund or more. Profits thus earned was far above the estimated figure. Taking all these facts into consideration we hold that the lowest rate, namely, six annas per maund of sugar produced is to be lowered by 1 anna and thus the industry as a whole would be able to bear after giving a reasonable return to capital, and the highest, namely, ten annas per maund of sugar produced is too high and has to be reduced by two annas. We decide accordingly.

35. The only general question that remains for consideration concerns the slabs. The Tribunal adopted four slabs, namely,

(1) where the quantity of cane crushed was 11 lacs maund or less.—No bonus was awarded in such cases.

(2) where the quantity crushed was over 11 lacs maunds and upto 18 lacs maunds—/6/- annas per maund of sugar produced.

(3) over 18 lacs maunds and upto 20 lacs maunds—/8/- annas per maund of sugar produced, and

(4) over 20 lacs maunds and upto 35 lacs maunds—/10/- annas per maund of sugar produced.

36. Out of the 23 factories which had been made liable by the Tribunal to pay bonus three of them had crushed a little over 18 lacs maunds and four just over 20 lacs maunds. They have, therefore, to pay a comparatively larger amount by just over-stepping the boundaries. By reason of the narrowness of the third slab the marginal cases which represent about 30.5 per cent of the total number of mills made liable have been hard hit. To avoid that hardship we think that the third slab should be removed altogether and the quantity of cane crushed should be fairly distributed between the two other slabs. We, therefore, direct, that bonus is to be calculated and paid in the following way, namely,—

(1) Quantity of cane crushed 11 lacs maund or less—No bonus.

(2) Quantity of cane crushed over 11 lacs and upto 24 lacs maunds—/5/- annas per maund on the total quantity of sugar produced.

(3) Quantity of cane crushed over 24 lacs and upto 35 lacs—/8/- annas per maund on the total quantity of sugar produced.

37. By the consent order passed on the application for stay of implementation of the award under appeal half the amount of bonus as awarded by the Tribunal had been directed to be paid within a certain time from the date of that order. Those employers who have paid are directed to pay the balance within a month from the date of our judgment and those who have not paid any amount or who had been exempted by the Tribunal and made liable by us must pay the whole amount within that date on the same basis as directed by the Tribunal.

38. The Tribunal had exempted all factories which had crushed over 11 lacs maunds of cane, but which had crushed for less than 80 days or had a recovery of less than 10 per cent., on the ground that they must be taken to have suffered loss or to have earned too little profits. Two North Behar Factories and four South Behar ones were thus exempted on this formula. The labour unions have pressed their appeals in respect of those four South Behar Mills, namely, the Rohtas Sugar Ltd., South Behar Sugar Mills, Ltd., Mohini Mills, Ltd., and Gaya Sugar Mills, Gararu, whereas the employers contend that the following factories made liable by the Tribunal, namely, the Belsund Sugar Co., Riga, the Sasamusa Sugar Works, Saran, Ganga Devi Mills, Vishnu Sugar Mills, Harkhua, and the two factories of Lohat and Sakri owned by the Darbhanga Sugar Co., Ltd., should also have been exempted. We will first deal with those individual factories which have been exempted by the Tribunal.

(1) *Re : Rohtas Mills, Dalmianagar :*

We do not think that this concern ought to be made liable. Its recovery was as low as 8.8 per cent. There was a prolonged strike at the most favourable period of the crushing season and the factory had to be closed for a long time. Though on account of the prolonged strike the Government ultimately made a concession by reducing the price of sugar cane by 4 annas a maund, the concession was made very late in the season. Taking all these facts into consideration especially the low recovery we maintain the award made by the Tribunal.

(2) *Re : Gaya Sugar Mills Co., Ltd., Gararu :*

Its crushing capacity is 23.1 lacs maund (850 tons). So according to its crushing capacity it could have crushed

1996.6 lacs maund of cane in 85 days. Its crushing period lasted for 117 days, the total amount of cane crushed being only 1606 lacs maund and recovery was as low as 9.29 per cent. The spread of the crushing to so many number days along with the comparatively average low rate of the crush in relation to the crushing capacity must have increased the cost of production per maund considerably by making the rate of supervising and overhead charges higher than the average cost of production which had been estimated on the Srivastav formula, and its recovery was only 9.29. We cannot, therefore, hold that it had earned profits.

(3) *Re : Mohini Sugar Mills Ltd., Bikramganj :*

Its crushing capacity is 19.1 lacs maunds. So it could have crushed 1619 lacs maunds in course of 85 days according to its capacity. It crushed 1356 lacs maunds in the course of 107 working days and its recovery was 9.8 per cent. Its position was a little more favourable than that of the Gaya Sugar Mills Ltd., but we do not think that it can bear the additional burden of bonus. If its recovery had been higher we would have made it liable.

(4) *Re : The South Behar Sugar Ltd., Bihta :*

The factory had been leased out by the company to the Jagadishpur Zamindary Co. Ltd., at a rent of rupees one lac a year and the period of the lease included the crushing season 1948-1949. Both the lessee and the company were made parties to the reference but neither of them assisted the Tribunal. All relevant information required was withheld. Sri Ram Krishna Prasad, the General Manager of the Company, however, gave his deposition. The factory reverted to the company's direct management as the result of a compromise decree after the crushing season was over. Sri Ram Krishna Prasad deposed to these facts and further said that one of the terms of the compromise was that the Jagadishpur Zamindary Company undertook the liability to pay bonus, if awarded. He made three significant statements, namely, that the company was very anxious to take direct possession and the Zamindary Company was also in its turn anxious to continue in possession, that the cane supply in the locality was ample, about 15 lacs maunds and that quantity was above the estimated crushing capacity. In these circumstances, we can infer that the factory had made substantial profits and so we think that this concern should be made liable for bonus. At any rate, the rent received by the Company would be ample to meet the claim for bonus. As there are no materials before us to fix the amount of bonus, we direct the labour Commissioner of Behar to ascertain from Government records the amount of cane crushed and the amount of sugar produced and calculate bonus according to the formula we have laid down. The liability of South Behar Mills Ltd. and of the Jagadishpur Zamindary Co. Ltd. will be *joint* and *several*, leaving it open to them to determine the liability amongst themselves *after the payment is made*. We would recommend a fresh reference by Government in respect only of the *amount* of bonus payable for season 1948-1949, if the amount cannot be ascertained by the Labour Commissioner, Behar.

38. We will now consider the cases of the six factories which had been made liable by the Tribunal and in respect of which the employers claim exemption. This is one of the subject matters of Appeal Nos. 3, 4, 18 and 26 of 1950. The Motilal Padampat Sugar Mills Limited which is the appellant in appeal No. 19 did not press for its exemption at the hearing. The six factories are :—(1) Belsund Sugar Co. Ltd., Riga, (2) The Sasamusa Sugar Works, Sasamusa, (3) Vishnu Sugar Mills Limited, Harkhua, (4) Lohat Sugar Factory, (5) The Sakri Sugar Works and (6) Ganga Devi Sugar Mills Ltd., Champaran.

*Re : Belsund Sugar Company, Riga :*

The crushing capacity is 850 tons and the quantity of cane crushed was 1179 lacs maunds odd. The recovery was 10.22 and the period of crushing was 84 days. We do not see how on these figures there could be loss which according to its balance sheet is shown at Rs. 4,64,027/-. The evidence of Sri L. L. Chowdhury examined on behalf of the employers is very damaging to their case, which has been rested mainly on the balance sheet. The Company was under the managing agency of James Finlay & Co., Ltd. previously. It was taken over by Bangur Brothers who paid a good sum, about 8 lacs for what is said to be a losing concern. His examination shows to what extent the expenditure side of the balance sheet has been inflated. We cannot, therefore, exempt this concern.

*Re : Vishnu Sugar Mills, Harkhua :*

Its crushing capacity is 500 tons=21.8 lacs maund and the total quantity crushed was 1588 lacs maunds. If it had crushed for 85 days at its full crushing rate the quantity would have been 1851 lacs maund. The crushing period calculated from the beginning of the season upto the date when crushing ceased is shown as 113 days, but the factory admittedly did not work for all those days for there was a breakdown which lasted for some time. There is no evidence as to what expenses were incurred during the period of breakdown. The recovery, however, was not low being 10.09 per cent. On these facts we cannot come to the conclusion that it suffered loss. We, therefore, do not exempt it.

*Re : Lohat and Sakri :*

These two factories are owned by the same company, namely, the Darbhanga Sugar Company Ltd. The crushing capacity of the first mentioned factory is 1500 tons= 35.4 lacs maunds and of the last mentioned 700 tons= 19.1 lacs maunds and the quantities actually crushed were 2087 lacs and 1556 lacs maunds of cane respectively. One worked for 98 days and other for 96 days. The percentage of recovery of Sakri was as high as 11.29 per cent. and of the other 10.19 per cent. Pooling the figures of the two factories together the position of this Company is much better than of those which had been made liable for bonus. It seems to be in prosperous condition. It had transferred Rs. 10,00,000/- (Ten lacs) to reserves in 1947-1948 and 4 lacs in 1948-1949 and its total reserves now stand at 52 lacs odd. The point that there was no dispute between the Company and its workmen in regard to bonus for the season 1948-1949 is a new point. It was not taken before the Tribunal and so cannot be allowed for the first time. We cannot exempt these two factories.

*Re : Ganga Devi Sugar Mills Ltd., Bagaha :*

Its crushing capacity is 17.7 lacs maund (=700 tons). It crushed 1480 lacs maund odd, which is slightly less than the quantity according to its crushing capacity and its recovery was lower (9.77 per cent.) in comparison with Mohini Mills Ltd., which was, 9.8 per cent. We accordingly exempt it. Similar considerations would apply to the Sasamusa Sugar Works and we exempt it also.

39. In regard to the question of leave the employers confined their attack on the award which relate to compulsory leave only. They contend that the Tribunal had no power to go into that question as it was not within the terms of the reference. In support of their contention they rely upon the phrase "*leave*, if any, *to be given* to the workmen" occurring in issue No. (2) of the reference, and say that "compulsory leave" is not *given* by the employer on the workmens' request. It is really forced non-employment. We do not think we would be justified in putting such a restricted interpretation. Putting workmen off the work without pay on account of insufficient supply of raw material, shortage of the crushing period etc. have acquired by usage the designation of compulsory leave, though in fact it is forced non-employment. So we think that the Tribunal could go into the question. Thus although a question of law arises which may be sufficient to support the competency of the appeal on the point, we do not think that the contention of the employers' can be given effect to on the merits. Such leave is *prima facie* inconsistent with the incidents of permanent service. The system of putting permanent workmen off the work without wages can be maintained only on the basis of agreement or of a valid Government Order.

40. On the question of retaining allowance to seasonal workmen the parties are agreed that skilled workmen and clerks should have retaining allowance at the rate of 50 per cent. of the consolidated wages, that semi-skilled at 25 per cent. and unskilled workmen should have no retaining allowance. The difference is on two points, namely, (i) who among skilled and semi-skilled workmen should have retaining allowance and (ii) the time and manner of payment of retaining allowance. It is not disputed that the jobs mentioned at page 14 of the printed award are jobs of skilled and semi-skilled workmen. The contention of employers is that the selection of seasonal workmen—skilled and semi-skilled—to whom retaining allowance should be given ought to be left to the discretion of the management and if not, all workmen employed in jobs enumerated in the list should not have retaining allowance in as much as the financial burden on the employers would in that case be too heavy. The Unions on the other hand contend that more categories of jobs ought to have been included in the list for the purpose of retaining allowance, such as, panmen and other mates. The list which was adopted by Tribunal is the list given in Nimbkar Report at 245 of Vol. I, Part II. That report has not been accepted by the Uttar Pradesh Government and the list is rather a long one. In these circumstances, we cannot enlarge the list as is contended for by the Labour Unions. We do not also think that it should be left to the employers to pick and choose for the purpose of paying retaining allowance during off-seasons. In the absence of any data as to the extra financial burden which would be involved by adopting that list and whether it would be such as the industry would not be able to hear, we think that we should maintain the list given in the award. We are, however, of opinion that the employers should get

some substantial benefit out of the service of those to whom retaining allowance is payable. For securing that purpose we direct that the liability to pay such allowance would arise on the seasonal workmen joining in the next crushing season, and the amount is to be paid in two equal instalments—the first within fifteen days after the man had joined and the second a month thereafter.

41. The Tribunal did not make any award on the conditions of service of workmen. Although the employers and employees had put in their respective drafts on the subject they did not precisely indicate the points of difference. This could have been found out by comparison of their respective drafts or by asking them to formulate precisely the points of difference on which they wanted an award to be made. But as things stand the service conditions cannot be settled in the course of this adjudication proceeding as the Tribunal has been dissolved and it would be a lengthy proceeding if we ourselves undertake that work. The best course would be to leave this matter for adjudication in another reference, if the Government chooses to make one. We may, however, point out that there may be an advantage if the reference is made after the certification of Standing Orders, for then it would be easier to find out the points of difference. We do not, however, agree with the view expressed by the Tribunal that there can be no adjudication or that no reference is to be made or is desirable till the Standing Orders are certified.

42. The result of our decision is as follows :—

I. Bonus for the season 1947-1948 is to be readjusted, that is to say, the amount is to be calculated on the basis of the original scale adopted by the Uttar Pradesh Government for the factories of Uttar Pradesh for that season, namely, according to the following scale.

| Amount of cane crushed in maunds | Rate of bonus per maund of sugar produced |
|---|---|
| Under 10 lacs .. .. .. .. | 4 annas. |
| Over 10 lacs and upto 18 lacs maunds .. .. | 6 annas. |
| Over 18 lacs and upto 20 lacs .. .. .. | 8 annas. |
| Over 20 lacs and upto 35 lacs .. .. .. | 10 annas. |
| Over 35 lacs .. .. .. .. | 11 annas. |

and the difference after deducting the amount that were payable under the final award of Mr. Shewpujan Rai is to be paid.

II. that bonus for the season 1948-1949 is to be paid on the following scale :—

| Amount of cane crushed in maunds | Rate per maund of sugar produced |
|---|---|
| (i) 11 lacs or less .. .. .. | *Nil* |
| (ii) Over 11 lacs and upto 24 lacs .. .. | 5 annas on the whole amount of sugar produced. |
| (iii) Over 24 lacs and upto 35 lacs .. .. | 8 annas on the whole amount of sugar produced. |

III. that the following factories are exempted from paying bonus for the season 1948-1949 :—

(a) Gaya Sugar Mills Ltd., Gararu.

(b) Mohini Sugar Mills, Ltd.

(c) Rohtas Sugar, Ltd.

(d) Sasamusa Sugar Works.

(e) Ganga Devi Sugar Works.

(f) Indian Sugar Works Siwan, and

(g) Sitalpore Sugar Works, Ltd.

The rest are to pay bonus.

IV. The balance of bonus payable for the seasons 1947-1948 and 1948-1949 after deducting payments, if any, made on the basis of the consent order passed in connection with application for stay of the implementation of the award is to be paid by these Mills made liable by our decision within a month from this date to the persons mentioned and in the manner as directed by the award under appeal. A factory or Mill made liable which has not paid any sum of money on the basis of the said consent order is to pay the whole amount due within a month from this date to the persons and in the manner as directed by the Tribunal.

V. The South Behar Mills and the Jagadishpur Zamindary Company are made jointly and severally liable. The payment of the whole of the bonus is to be made within the aforesaid period and to the persons and in the manner as directed above.

VI. In case any payment has been made towards bonus for the season 1948-1949 by the Sasamusa Sugar Works or Ganga Devi Sugar Mills which have been exempted by us, on the basis of the said consent order, those payments are to be treated as advance wages to the workmen who are or may in future be in the service of the said concerns and to be deducted from their wages in terms of the rules framed by the Behar Government under the Payment of Wages Act. If appropriate rules have not been framed by that Government, then in two equal instalments payable in two consecutive months. In the case of workmen not in service of the said concerns, the said concerns would be entitled to recover the amounts according to law.

VII. That the award of the Tribunal relating to leave, holidays and compulsory leave stands.

VIII. 50 per cent. of the consolidated wages are to be paid to such of skilled seasonal workmen as had been employed in the previous crushing season in jobs enumerated by the Tribunal and to seasonal clerks, and 25 per cent. of their consolidated wages to such of the semi-skilled workmen who had been employed in the previous crushing season in the jobs enumerated by the Tribunal. The liability to pay would accrue only if the person offers to join on the following crushing season within seven days of its commencement. Half the amount would be payable within fifteen days after the person joins and the remaining half a month thereafter.

IX. The questions relating to service conditions are left open and the observations made by the Tribunal while dealing with it are expunged.

43. The Tribunal did not consider all the complaints made under Section 33(a) of the Act. It should have done so. As the Tribunal has been dissolved, we cannot make a remand for the consideration of those complaints. It would be open to the Unions to move the Bihar Government to constitute another Tribunal for adjudicating upon those complaints.

44. In conclusion we wish to express our appreciation for the great assistance given to us by Mr. Bhagati Khaitan and Mr. Malden who appeared for the employers and Mr. Roman Roy, Thakur Yugal Kishore Singh and Mr. Turpule who appeared for the Labour Unions and the fair manner in which they presented their respective cases.

45. As the success is divided we direct the parties to bear their respective costs.

*President.* *Member.*

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Appeal No. 51 of 1950

The Champdany Jute Mills' Employees Union, Baidyabati, P. O. Dist. Hooghly. Appellants.

*Versus*

The Champdany Jute Mills, Hooghly. Respondents.

In the matter of an appeal against the award of Sri S. N. Modak, I.C.S. Judge, Industrial Tribunal, Calcutta made on 15th July 1950 in respect of an industrial dispute between the above parties. (Published in the Calcutta Gazette dated the 3rd August 1950).

*Calcutta, the 12th March 1951*

*Present :*

Mr. J. N. Majumdar—*Chairman.*

R. C. Mitter, Kt.—*Member.*

*Appearances—*

For the Appellants—
Mr. P. K. Sanyal, Advocate.

For the Respondents—
Mr. S. C. Sen, Advocate.

*State.*—West Bengal.

*Industry.*—Jute.

DECISION

1. This is an appeal against the award of Mr. S. N. Modak, Chairman, Industrial Tribunal, which was published in the Calcutta Gazette on the 28th July, 1950. The award was made on a reference by West Bengal Government by its Order No. 5887-Labour, dated the 2nd November, 1949. The dispute referred to was between the clerical staff represented by the appellant Union and the respondent Mills on the question of revision of grades and scales of pay of the clerical staff on a fair and equitable basis. The appeal was filed beyond the time limited by Section 10 of the Industrial Disputes (Appellate Tribunal) Act, 1950, but we condoned the delay and heard it on merits.

2. The dispute referred to arose as follows :—

Since 1946 the clerical staff had been making representations to the authorities of the Mills for revision of their

grades and scales of pay. After the formation of the employees' Union in March, 1947, the Union pressed the demands of the staff, one of which was that they should be placed in grades equal to those of the Calcutta office staff. This dispute as well as similar disputes in existence in other Jute mills were referred to the Jute Textile Industrial Tribunal, which, by its award published in the official gazette by Government Order, dated 20th September 1948, fixed grades for the lower grade clerks at Rs. 70—4—130, being Grade I and Rs. 55—3—85, being Grade II, but did not fix any grade or scale of pay for higher and special grade clerks in view of the different conditions prevailing and scales of pay varying widely from mill to mill. The matter was left to the discretion of the individual mills. The period of the operation of that award was from 20th September 1948 to the 19th September, 1949. The Union, however, persisted in its demand and made representations to the authorities of the mills for revision of the grades and scales of pay of the clerical staff *in general* which included the higher or special grade clerks. In April 1949, the Union was informed by the mills that as the Jute Mills Association would be issuing the revised grades which might be more favourable to the clerks, they did not consider it necessary to regrade them, but when the Association's regrading was issued it would be made effective from the 1st of January, 1949. The Union took other steps by approaching the Labour Commissioner for getting its demand given effect to by the Mills, but as no settlement was arrived at, the reference leading to the award under appeal was made.

In the proceedings before the Industrial Tribunal the propriety of grading the lower grade clerks made by the Jute Textile Industrial Tribunal, as mentioned above, was not challenged, nor has it been done before us. The Union's demand was (1) that the grades should be fixed in accordance with the terms laid by the award of the Mercantile Firms Tribunal in respect of the clerical staff of the Managing Agents of the Respondent Mills; (2) that the grades to be applied to the higher or special category of clerks should be determined by the Tribunal; (3) that the Tribunal should evaluate all the jobs held by higher or special grade clerks as also by the lower grade clerks and each job should correspond to a particular grade and a person holding a particular job should be entitled to the corresponding grade.

As to (1), we understand that the clerical staff of the office of the Managing Agents of the Mills at Calcutta are governed by the grade and scales of pay as awarded by the Tribunal referred to as the Mercantile Firms Tribunal. That award fixed the following grades and scales of pay :—

Grade C .....Rs. 70—140 increments of Rs. 3/- to Rs. 6/-.
Grade B .....Rs.110—180 increments of Rs. 6/- to Rs. 8/-.
Grade A .....Rs.160—260 increments of Rs. 8/- to Rs. 10/-.
Selection Grade Rs.250—750 with minimum yearly increment of Rs. 12/-.

Mr. Sanyal's contention that this scale of pay should be made applicable in the case of clerical staff working in the Mills at Champdani did not find favour with the Tribunal below. Before the Tribunal no evidence was adduced as to the similarity between the clerical staff of the Calcutta office and those of Champdani, in respect of the nature of duties or conditions of service, or qualification of the incumbents or other matters which would justify a demand for uniformity of grades and scales of pay between them. In the absence of such evidence the Tribunal came to a perfectly legitimate conclusion that the case of the clerical staff of the Mills should be considered independently of the Calcutta staff. We are not prepared to disturb that conclusion merely on the argument of Mr. Sanyal, and in the absence of evidence that the staff of both places are recruited from the men of same social status or education and they do the same kind of work.

5. The other two demands, namely, (2) and (3) mentioned above are dealt with together. The position is this :—

(a) The appellants and the respondents accept the two grades for the lower grade clerks, as mentioned above.

(b) They agree to the determination of a grade for each class of jobs :—

The parties submitted separate lists containing the names of 78 clerks holding different jobs with their present designations, duties, remuneration and suggestions as to the grades applicable to those jobs regarding which there was some divergence.

(c) They differed as to the higher grades.

The Union suggested two grades, namely, (I) Rs. 150—10—250 (II) Rs. 110—5—170 and a special grade above these grades, the fixation of which was to be left to the discretion of the Management.

The mills on the other hand suggested 5 grades, namely,

I. Rs. 190—5—250.

II. Rs. 130—5—190.

III. Rs. 110—5—170.

IV. Rs. 100—5—160.

V. Rs. 90—5—150.

6. It appears that there is a difference between the parties in respect of the number of grades. The Union suggests two upper grades in addition to a selection grade. It says that on principle there should not be too many higher grades, whereas the Mills suggest 5. The Tribunal, however, considering the various types of work in running all the departments of the Jute Mill and considering the arguments came to the conclusion that there need not be too many higher grades, nor there should be too few grades and adopted a mean and fixed four grades. We have examined in details the classifications of jobs given in the chart annexed to the award which, in our opinion, require the division into four grades. Moreover, no convincing argument has been addressed to us on behalf of the appellants to induce us to disturb the conclusions arrived at by the Tribunal below. It is also worth noticing that the Mercantile Firms Tribunal's award, which the Union wants to be made applicable, fixed three grades for its clerical staff plus a selection grade.

7. In the matter of evaluations of the jobs put into the several grades, as made by the Tribunal no satisfactory reasons have been suggested by the appellants which would justify a modification of the award under appeal. The process of evaluation is more or less arbitrary. The material thing for consideration is whether the relative importance of the several jobs have been taken into account by the Tribunal in fixing the different grades and scales of pay. In this matter an examination of the chart would show that that factor did not escape the notice or consideration of the Tribunal. The head clerks in charge of different departments have been placed on higher grades to those of their respective assistants except in one case which we will consider hereafter, and the head clerks of different departments of work have not been placed in the same grade but in different grades according to the nature and responsibility of the job of that particular department. Thus the principal head clerk has been placed in grade SA, the head clerk of the Stores Department which is next in importance in SB, the finishing head clerk in SC, the Rationing head clerk in SD and the head typist has been promoted from lower grade No. I to the next higher grade, namely, SD. We need not multiply other instances. The only mistake in our judgment that has been committed by the Tribunal is that the Provident Fund head clerk Ganesh C. Ghose (Serial No. 7) has been placed in the same grade as his three assistants, whose names appear in serial numbers 25, 39 and 40. From the nature of the duties, as detailed in the chart, it would appear the duties of Ganesh Ghose carry greater responsibility than every one of those three persons. In this respect we modify the award and direct Ganesh L. Ghose to be placed in grade SD (Rs. 90—5—150).

8. Two other questions have been raised by the appellant Union :—

(i) that the rule laid down for the fittings in the revised grades in unjust, and

(ii) that the new scales ought to have been given effect to retrospectively not from the 1st January, 1950 but from 1st January, 1949, which the Mills had agreed to do by their letter of the 12th April, 1949.

9. The directions given by the Tribunal in respect of the first matter are as follows :—

(a) that the initial pay of a clerk should be fixed at that stage which is equal to or next above the pay he was getting at the time when the revised scales would come into operation, and

(b) over and above that, he is to get *one* increment according to the revised scale.

10. No objection has been or could be taken to the first part. In fact the appellant Union has confined its contention to the Second part only. Its contention is that that part of the rule does not take into account the length of service of a particular clerk. In support of its contention the case of Nibaran Chandra Ghose (serial No. 3) is

taken up and compared with that of Nabin Ch. Ghose (serial No. 4) by way of illustration. The former had put in 29 years' service and was in lower grade No. I. By reason of the length of his service he was drawing the maximum pay of that grade, namely, Rs. 130. He has been put by the Tribunal in grade SD and according to the rule laid down by the Tribunal his starting pay in the new grade would be Rs. 135. The Company, however, offered him Rs. 150. Nobin Chandra Ghose (Serial No. 4) was a man of 15 years standing and he was also getting Rs. 130 as the other man. He has been directed by the Tribunal to be promoted also to grade SD. According to that rule his starting pay would also be Rs. 135. Thus a man with much greater length of service would be placed on the same footing in the matter of starting pay with a much junior man.

11. It is difficult to evolve a solution of the question of fixing the existing staff into the revised scales of pay, which will be satisfactory to all the employees, but whatever it be, our opinion is that the element of length of service cannot be ignored. This question engaged the attention of the different Tribunals from time to time. It was also considered by the Central Pay Commission, which, after discounting the suggestion of point to point adjustment, recommended that the employees' initial pay should be fixed first as being the stage next above the pay, then being drawn and then by adding special increments at the rate of one increment in the new scale for every three completed years of service. The net result up to now has been the acceptance by the different Tribunals of the scheme suggested by the Pay Commission Report with certain variations, having regard to the circumstances of the particular cases. We do recognise that generally the scheme recommended by the Central Pay Commission approximates the solution of the problem, but in our opinion, the period of service which would entitle a special increment has to be fixed on the special circumstances regarding the increase in wages, capacity to pay, etc. and a fixed rule of three years, as recommended by the Pay Commission, would not be proper in every case.

Having regard to the critical stage through which the Jute Industry is now passing, we think that the rule should at the present time be, that when the employee in an existing lower grade is brought on to the corresponding revised grade, his initial wages should be fixed at the stage in the new grade which is equal to or next above the pay he was drawing at the time when the new grade would come into operation and to the wages thus obtained should be added special increments at the rate of one increment in the new scale for every six completed years of service, subject to the maximum of that particular grade.

12. Regarding the question of retrospective effect, the position is as follows.—The Jute Textile Tribunal fixed the grades and scales of wages of lower grade clerks only but left the fixation of grades and scales of pay of upper division clerks to the discretion of the employers. After this award, the respondent Company received representations from the upper division clerks for fixation of their grades and scale of wages and ultimately agreed to give effect to the recommendations of the Indian Jute Mills Association regarding the grades and scale of wages which were expected to be received within a short time and promised to give retrospective operation to those recommendations from the 1st January, 1949. This promise was, however, made in respect of the grades and scales of wages that would be determined by that Association and so cannot be relied upon for fixing the date of retrospective operation to the grades and scale of wages fixed as a result of adjudication proceedings. The Tribunal had proceeded on the principle that retrospective operation to the award should be given from the time when the dispute came up for adjudication. We cannot say that the Tribunal is wrong. The result is that, subject to the modifications indicated above, this appeal is dismissed. No Costs.

J. N. MAJUMDAR,
*Chairman.*

R. C. MITTER,
*Member.*

*Calcutta, the 6th September* 1951

**No. LA.1(4)/3193.**—In pursuance of Section 8(3) of the Industrial Disputes (Appellate Tribunal) Act, 1950 (No. XLVIII of 1950) it is hereby notified that a bench of the Labour Appellate Tribunal of India will sit at Allahabad from 17th September, 1951.

J. N. MAJUMDAR,
*Chairman.*
*Labour Appellate Tribunal of India.*

## DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS

### NOTIFICATION

*New Delhi, the 4th September* 1951

**No. 656.**—Mr. P. L. Kathuria, Assistant Inspecting Officer (Engg.) in the Directorate General of Supplies and Disposals at Calcutta has been granted earned leave for 34 days from the 27th August 1951 to 29th September 1951 with permission to prefix and suffix Sundays on 26th August 1951 and 30th September 1951 respectively to the leave.

SHIV CHARAN SINGH,
*Director (Administration & Co-ordination).*

## MINISTRY OF COMMERCE AND INDUSTRY

### NOTIFICATIONS

*Bombay, the 1st September* 1951

**No. TCS-IV/CTM/7.**—In pursuance of sub-clause (e) of clause 2 of the Cotton Textiles (Control of Movement) Order, 1948, I hereby direct that the following further amendment shall be made in the Textile Commissioner's Notification No. 15-Tex.1/49(ii), dated the 25th March 1950, namely :—

In the table appended to the said Notification, for entry No. 11, the following shall be substituted, namely :—

"11. Shri M. Bhatnagar, Textile Controller, Saurashtra, Rajkot. Saurashtra."

**No. TCS IV/CTM/8.**—In pursuance of sub-clause (e) of clause 2 of the Cotton Textiles (Control of Movement) Order, 1948, I hereby authorise each of the Officers specified in the Schedule below, to issue Special Transport Permits under Clause 3 of the said Order, for the transport of powerloom cloth from any place within his jurisdiction.

*Schedule*

1. All District Organisers, Civil Supplies and Rationing in Punjab.
2. The District Food and Civil Supplies Controller, Simla.
3. The Assistant Organiser, Civil Supplies and Rationing, Amritsar.
4. The District Supplies Officer, Kangra at Dharamsala.

T. SWAMINATHAN,
*Textile Commissioner.*

## SURVEY OF INDIA

### NOTIFICATIONS

*Mussoorie, the 1st September* 1951

**No. 2140/P.F.**—Shri K. L. Dev, Manager, Reproduction Offices, Survey of India is granted, under the Revised Leave Rules 1933, earned leave for 20 days from 17th September 1951 with permission to prefix Sunday the 16th September 1951 and affix Sunday the 7th October 1951 and holidays on 8th to 13th and 15th October 1951 to the leave.

There is no likelihood of the officer returning to a post carrying a lower rate of pay on termination of the leave.

The officer is likely, on the expiry of the leave, to return to duty at Calcutta, from where he proceeded on leave.

*The 6th September* 1951

**No. 2141/P.F.**—Shri D. Biswas, Officer Surveyor, Surveyor General's Office, Mussoorie is granted under the Revised Leave Rules, 1933 earned leave for 31 days from 16th August 1951 with permission to prefix holiday on the 15th August 1951 and affix Sunday the 16th September, 1951 to the leave.

I. H. R. WILSON, *Colonel,*
*Offg. Surveyor General of India.*

## GEOLOGICAL SURVEY OF INDIA

### NOTIFICATIONS

*Calcutta-13, the 3rd September* 1951

**No. 11967.**—Director, Geological Survey of India, has been pleased to grant to Mr. G. H. S. V. Prasada Rao,

Asst. Geologist, Geological Survey of India, earned leave for three days with effect from the forenoon of the 9th August 1951, with permission to affix the 12th August 1951 being Sunday.

He is likely to resume his duties at Puri whence he has proceeded on leave.

N. K. N. AIYENGAR,
*Assistant Director.*
*Geological Survey of India.*

*Calcutta-13, the 8th September* 1951

**No. 12229.**—Mr. C. Nageswara Rao, M.Sc. is appointed to officiate as Assistant Geologist in the Geological Survey of India on Rs. 275 p.m. in the scale of Rs. 275—25—500—E.B.—30—650 with effect from the forenoon of 6th September 1951 until further orders.

M. S. KRISHNAN,
*Director.*
*Geological Survey of India.*

## MILITARY ACCOUNTS DEPARTMENT

NOTIFICATION

*New Delhi, the 6th September* 1951

**No. 5521-AN.**—Shri B. L. Jain, Deputy Field Controller of Military Accounts (ORs) has been granted leave as under :—

Earned Leave—16th April 1951 to 20th April 1951 and 23rd May 1951 to 30th May 1951.

Leave not due under para. 9 of Government of India, Ministry of Finance Office Memorandum No. F.2(1)Est.(Spl)/48, dated 24th February, 1949—31st May 1951 to 18th June 1951.

R. JAGANNATHAN
*Military Accountant General.*

## DIRECTORATE GENERAL, ALL INDIA RADIO

NOTIFICATIONS

*New Delhi, the 6th September* 1951

**No. 1(1/10)-SII/51.**—Mr. R. N. Venky, officiating Sub-Editor, News Services Division, All India Radio was granted earned leave for 25 days with effect from the 11th June, 1951 and his services in All India Radio were terminated with effect from the afternoon of the 5th July, 1951.

**No. 1(1/20)SII/51.**—Mr. R. C. Bhatia, officiating Sub-Editor, News Services Division, All India Radio, was granted earned leave for 21 days with effect from the 11th July and his services placed at the disposal of the Ministry of External Affairs thereafter.

**No. 10(30)-EII/51.**—Dr. Ram K. Vepa, Officiating Research Officer, All India Radio, New Delhi, was granted earned leave for 10 days with effect from the 4th June, 1951, combined with extra-ordinary leave for 7 days in continuation thereof with permission to prefix Sunday, the 3rd June 1951, to the leave.

S. BANERJEE,
*Deputy Director of Administration.*
for *Director General.*

*New Delhi, the 6th September* 1951

**No. 12(32)-A/51.**—Mr. B. V. Baliga, Chief Engineer, All India Radio was granted extension of earned leave for 7 days from the 24th June 1951, with permission to affix Sunday the 1st July 1951, to the leave.

M. LAL,
*Deputy Director General,*
for *Director General.*

*New Delhi, the 7th September* 1951

**No. 10(31)-EII/51.**—Mr. P. S. Nilakantan, resumed charge as officiating Deputy Engineer-in-Charge, High Power Transmitters, All India Radio, Delhi on the forenoon of the 4th August 1951, on return from earned leave for 15 days.

**No. 11(4)-EII/51.**—Mr. Shafaqat Shareef, Assistant Engineer, AIR, Hyderabad, (Deccan) was granted privilege leave for 30 days with effect from the 6th August 1951 with permission to affix Sunday, the 5th August 1951 to the leave.

Mr. L. S. Srinivasan, officiating Assistant Engineer, AIR, Hyderabad (Deccan) was granted privilege leave for 30 days with effect from the 15th May 1951.

*The 8th September* 1951

**No. 1(33)-A/51.**—Dr. R. M. Marathey, officiating Officer on Special Deputy, All India Radio, Hyderabad, who was granted leave in this Directorate Notification No. 1(33)-A/51, dated the 17th May 1951, is posted as officiating Station Director, All India Radio, Allahabad, where he took over charge on the 30th August 1951.

2. The un-expired portion of Dr. Marathey's leave on half pay from the 30th August to the 15th September 1951 is cancelled.

**No. 4(1/2)-AII/51.**—Mr. D. Srinivasan, officiating Assistant Director of Monitoring Service, AIR, Simla was granted earned leave for 20 days with effect from the 23rd July 1951, with permission to affix Sunday the 12th August 1951, to his leave.

S. BANERJEE,
*Deputy Director of Administration,*
for *Director General.*

## PRESS INFORMATION BUREAU

NOTIFICATIONS

*New Delhi-2. the 4th September* 1951

**No. F. 19/6/50-Est.**—Dr. (Miss) Kaumudi, temporary Assistant Information Officer, Press Information Bureau, was granted earned leave for 15 days from July 30, 1951 to August 13, 1951 with permission to prefix the holiday on July 29, 1951 to the period of leave.

On return from the leave, Dr. (Miss) Kaumudi relinquished charge of her post in the Bureau on the forenoon of August 14, 1951.

*The 5th September* 1951

**No. F. 19/8/51-Est.**—Shri S. N. Bhattacharya, temporary Assistant Information Officer, Press Information Bureau, has been granted earned leave for 48 days from August 1, 1951 to September 17, 1951.

*The 6th September* 1951

**No. F.18/66/49-Est.**—Shri Raghunath Raina, Assistant Information Officer, Press Information Bureau, has been granted earned leave for 29 days from September 3, 1951 to October 1, 1951 with permission to affix the holidays on September 2, 1951 and October 2, 1951, to the period of the leave.

*The 7th September* 1951

**No. 18/168/48-Est.**—Shri R. L. Lekhi, temporary Photographer, Press Information Bureau, has been granted leave on average pay for four months with effect from September 7, 1951.

B. L. SHARMA,
*Principal Information Officer*

## DIRECTORATE GENERAL OF HEALTH SERVICES

NOTIFICATION

*New Delhi, the 4th September* 1951

**No. 1-28/51-PHI(Instts)**—Dr K. C. Patnaik, M.B.B.S. (Luck.), D.P.H. (Cal.), M.P.H., D.P.H. (Johns Hopkins), is appointed as Assistant Professor of Public Health Administration at the All-India Institute of Hygiene and Public Health, Calcutta, for a period of five years with effect from the 4th March 1951, with the first year on probation.

T. C. PURI, *Lt-Colonel,*
for *Director General of Health Services*

## INDIAN AGRICULTURAL RESEARCH INSTITUTE

NOTIFICATION

*New Delhi, the 8th September* 1951

**No. F. 1/20052.**—Mr. J. M. Banerjee, Registrar, Indian Agricultural Research Institute is granted leave on average

pay for six days from 18th August, 1951, with permission to suffix 24th August, 1951 (holiday) to the leave.

B. P. PAL,
*Director.*

## DIRECTORATE OF PLANT PROTECTION QUARANTINE & STORAGE

### NOTIFICATIONS

*New Delhi, the 4th September 1951*

**No. F. 2-145/47-G.**—Bawa Jaswant Singh, Administrative Officer is granted five weeks leave on average pay w.e.f. the 3rd September, 1951 with permission to prefix Sunday the 2nd September, 1951 and suffix Dushera holidays on the 8th, 9th and 10th October, 1951. On the expiry of the leave he is likely to resume duty at New Delhi.

**No. 28(7)/50-G.**—In supersession of this office Notification No. F. 28(7)/50-G, dated the 17th March and 16th July, 1951, Dr. J. C. Saha, a temporary Plant Pathologist (Class II) in this Directorate, was granted leave as under :—

13th February 1951 to 11th March 1951 (27 days) earned leave.

12th March 1951 to 31st March 1951 (20 days) half pay leave.

1st April 1951 to 30th June 1951 (A.N.) (3 months) extraordinary leave.

2. As Dr. Saha did not return to duty on the expiry of the above leave, he ceased to be in Government Employment with effect from 30th June, 1951 (A.N.)

B. B. MUNDKUR,
for *Plant Protection Adviser.*

## INDIAN POSTS AND TELEGRAPHS DEPARTMENT

### Office of the Director General Posts and Telegraphs

### NOTIFICATIONS

*New Delhi, the 30th August 1951*

**No. STA.177-14/51.**—Shri L. D. Kumaria, Assistant Engineer, Telephones, is permitted to retire from service with effect from the 20th January 1952.

*The 31st August 1951*

**No. SPA.73-2/51.**—Consequent on the re-organisation of the Postal Service, the following officers of the Senior Time Scale Cadre of the Indian Postal Service, Class I, have been transferred from the Circle Offices and posted as Senior Superintendents of Post Offices and Railway Mail Service in charge of Divisions and with effect from the dates mentioned against them :—

| | | | | |
|---|---|---|---|---|
| 1 | Shri P. C. Bose .. | Postal Division, Allahabad . | 28-7-51 | |
| 2 | ,, B. K. Dingal . | Postal Division, Baroda .. | 6-8-51 | |
| 3 | ,, M. N. Basu .. . | Postal Division, Jabalpur .. | 7-8-51 | |
| 4 | ,, B. K. Rao .. . | Postal Division, Nagpur .. | 6-8-51 | |
| 5 | ,, G. N. Rebello . | Postal Division, Dehradun . | 10-8-51 | |
| 6 | ,, S. P. Biswas .. .. | Postal Division, Cuttack .. | 23-7-51 | A.N. |
| 7 | ,, R. P. Singh . | Postal Division, Meerut | 13-8-51 | |
| 8 | ,, A. S. Khan .. .. | Postal Division, Aligarh | 30-7-51 | |
| 9 | ,, B. Lall .. .. | Postal Division, Patna . | 2-8-51 | |
| 10 | ,, P. N. Masand .. | Postal Division, Ahmedabad | 6-8-51 | |
| 11 | ,, M. A. Khan .. .. | Postal Division, South Rajputana Ajmer. | 9-8-51 | |
| 12 | ,, K. L. Bhola .. | Postal Division, Hyderabad | 10-8-51 | |
| 13 | ,, S. M. Ghosh .. .. | R.M.S. Division, Calcutta Sorting. | 27-7-51 | A.N. |
| 14 | ,, N. Doval .. | Postal Division, Kanpur .. | 18-8-51 | |
| 15 | ,, S. B. Velankar .. | R.M.S. Division, Bombay Sorting .. | 31-7-51 | A.N. |
| 16 | ,, A. N. Biswas .. .. | Postal Division, Lucknow .. | 24-7-51 | |
| 17 | ,, G. Cheriyan .. .. | Postal Division, Bangalore | 26-7-51 | |
| 18 | ,, Jaikishen Das .. | Postal Division, Amritsar .. | 2-8-51 | |
| 19 | ,, G. S. Bhatia . | Postal Division, Ambala .. | 7-8-51 | A.N. |

The following officers of the Junior Time Scale cadre of the Indian Postal Service, Class I, have been posted to the charges and with effect from the dates mentioned against them :—

| | | | | |
|---|---|---|---|---|
| 1 | Shri K. Gopalakrishnan .. | A.P.M.G., Madras .. | 17-8-51 | |
| 2 | ,, M. P. Sinha .. | A.P.M.G., Lucknow .. | 30-7-51 | |
| 3 | ,, J. R. Mehta .. . | Supdt. of Post Offices, Rajkot Division. | 6-8-51 | |
| 4 | ,, M. R. Krishnan .. | A.P.M.G., Nagpur .. | 10-8-51 | |
| 5 | ,, K. S. Sahay .. .. | A.P.M.G., Patna . | 1-8-51 | A.N. |
| 6 | ,, V. N. Chhiber.. .. | Supdt. of Post Offices, Delhi Division. | 6-8-51 | A.N. |
| 7 | ,, S. V. Kulkarni .. | A.P.M.G., Nagpur .. | 4-8-51 | A.N. |
| 8 | ,, R. K. Kaul .. .. | Supdt. of Post Offices, Kashmir Division, Srinagar. | 20-7-51 | |
| 9 | ,, M. L. Gaind .. | A.P.M.G., Hyderabad .. | 9-8-51 | |
| 10 | ,, N. Chidambaram . | A.P.M.G., Lucknow .. | 23-7-51 | |
| 11 | ,, S. P. Veerkar .. | Offg. A.P.M.G., Nagpur .. | 28-7-51 | |
| 12 | ,, G. V. Subba Rao | Offg. Dy. Director, Cuttack | 23-7-51 | A.N. |
| 13 | ,, B. L. Mehra .. .. | Offg. A.P.M.G., Ambala .. | 12-7-51 | |
| 14 | ,, Y. B. Kaluskar .. | Offg. Dy. Director, Foreign Post, Bombay. | 1-8-51 | |
| 15 | Shri G. Subba Rao .. | Offg. A. P. M. G. | Madras . | 23-7-51 A.N. |
| 16 | ,, K. Shankar Rao . | Offg. ,, | Bombay. | 31-7-51 A.N. |
| 17 | ,, K. Janardhan .. | Offg. ,, | Madras | 18-7-51 |
| 18 | ,, R. B. Pandit .. | Offg. ,, | Bombay | 31-7-51A.N. |
| 19 | ,, Nand Kishore . | Offg. ,, | Ambala | 7-8-51 |
| 20 | ,, M. S. Bhadkamkar .. | Offg. ,, | Bombay | 31-7-51A.N. |
| 21 | ,, S. K. Ghosh .. | Offg. ,, | Calcutta | 27-7-51 |
| 22 | ,, S. Banerji .. | Offg. Supdt. of Post Offices, East Rajputana Division, Jaipur. | | 23-7-51 A.N. |
| 23 | ,, J. C. Danda . | .. Offg. A P. M. G. | Calcutta .. | 26-7-51 AN. |

*New Delhi, the 4th September 1951*

**No. STA.159-2/51.**—Mr. C. S. Adams, Assistant Superintendent, Madras Central Telegraph Office is granted leave on average pay for three months with effect from the 2nd August 1951 and is permitted to retire from service on the expiry of the leave.

KRISHNA PRASADA,
*Director-General.*

## OFFICE OF THE DIRECTOR GENERAL OF CIVIL AVIATION

### NOTIFICATIONS

*New Delhi, the 3rd September 1951*

**No. EA.11-6/51.**—Shri H. I. S. Kanwar, Assistant Aerodrome Officer, Civil Aviation Training Centre, Allahabad was transferred from Allahabad with effect from the afternoon of the 13th August 1951 to Calcutta Airport, Dum Dum where he assumed charge of his duties on the 20th August 1951.

*New Delhi, the 3rd September 1951*

**No. EH.15-8/51.**—Shri G. D. Singh, Deputy Director of Air Routes and Aerodromes, Civil Aviation Directorate, New Delhi, has been granted earned leave for 29 days with effect from the 1st September, 1951, with permission to affix Sunday the 30th September, 1951 to his leave.

*The 4th September 1951*

**No. ES.15-21/51.**—Shri J. B. Bayas, Senior Aircraft Inspector has been granted earned leave for 55 days with effect from the 6th August, 1951, with permission to prefix Sunday, the 5th August, 1951 and affix Sunday the 30th September, 1951, to his leave.

*The 7th September 1951*

**No. E(C)15-14/51.**—Mr. K. N. Bahl, Deputy Controller, Radio Construction and Development Units, New Delhi, has been granted leave on average pay for one month and 12 days with effect from the 25th August, 1951, with permission to prefix closed holiday on the 24th August, 1951, and suffix Sunday and closed holidays on the 7th to 10th October, 1951, to his leave.

*The 8th September 1951*

**No. EA15-1/51.**—Shri Surat Singh, Assistant Aerodrome Officer, Safdarjung Airport, New Delhi has been granted extension of earned leave for 4 days from 29th June 1951 to 2nd July 1951, in continuation of ten days earned leave granted vide this office Notification of even number dated the 7th July, 1951.

**No. EA15-1/51.**—Shri Jitendra Nath, Assistant Aerodrome Officer, Calcutta Airport, Dum Dum has been granted earned leave for 30 days with effect from the 23rd August, 1951.

D. CHAKRAVERTI,
*Offg. Director General of Civil Aviation.*

## INDIA METEOROLOGICAL DEPARTMENT

### NOTIFICATIONS

*New Delhi-3, the 4th September 1951*

**No. E(I).03121.**—On his return from temporary deputation in the Ministry of External Affairs, Mr. A. Narayanan, M.A., resumed duty as Assistant Meteorologist at the Headquarters Office, New Delhi, on the forenoon of the 27th August, 1951.

**No. E(I).03615.**—Mr. A. J. Shirgaokar, M.Sc., Professional Assistant, has been appointed to officiate, until further orders, as Assistant Meteorologist in the Indian Meteorological Service, Class II (Central Service, Class II) with effect from the forenoon of 24th August 1951. Mr. Shirgaokar has been posted to Poona.

V. V. SOHONI,
*Director General of Observatories.*

## DIRECTORATE OF MARKETING AND INSPECTION

NOTIFICATION

*New Delhi, the 6th September* 1951

**No. F.56(3)/302/49-D.**—Shree L. K. Shukla, B.Sc., A.H.B.T.I., Officiating Inspector, (Quality Control) has been granted an extension of half pay leave from the 23rd to the 25th August, 1951, with permission to suffix thereto Sunday, the 26th August, 1951.

On the expiry of the leave Shri Shukla was likely to return to duty at the same headquarters from where he proceeded on leave, *i.e.*, New Delhi.

B. C. SEN,
*Deputy Agricultural Marketing Adviser, to the Government of India.*

## COLLECTORATE OF CENTRAL EXCISE

NOTIFICATIONS

*Calcutta, the 31st August* 1951

**No. 20.**—The following postings of Superintendents of Central Excise are hereby notified :—

| | | From | To |
|---|---|---|---|
| 1 | Sri Tej Kishore Shoopuri (Permanent). | Muzaffarpur I I Circle in Patna Collectorate. | Muzaffarpur I Circle in Patna Collectorate from 21-8-51 A.N. |
| 2 | Sri Kasi Khetra Gengu-ly (Officiating) | Muzaffarpur I Circle .. | Calcutta III Circle from 27-8-51 A. N. |
| 3 | Sri Kamalendu Sekhar Saha (Temporary substantive). | Calcutta III Circle .. | Calcutta V Circle from 27-8-51 A. N. |
| 4 | Sri K. N. Patnaik, (Officiating | Alipore Circle .. | Jeypore Circle from 23-8-51 F. N. |
| 5 | Sri Kamalapada Hati Temporary substantive) | Jalpaiguri I Circle .. | Alipore Circle from 22-8-51 F. N. |

J. W. ORR,
*Collector of Central Excise, Calcutta.*

*Allahabad, the 4th September* 1951

**No. 15.**—Shri D. P. Varshney, Superintendent of Central Excise, Central Preventive, Headquarters Office, Allahabad, has been transferred to the Rewa Circle, with effect from the 27th June 1951, afternoon.

S. C. SATYAWADI,
*Collector.*

*New Delhi, the September* 1951

**No. 21.**—Shri Y. N. Chopra, a temporary substantive Superintendent of Central Excise, relinquished charge of the office of Superintendent Headquarters, New Delhi, on the afternoon of the 4th August, 1951.

**No. 22.**—Shri A. S. Berar, Superintendent of Central Excise relinquished charge of the office of the Superintendent of Central Excise, Ajmer and also of the office of the Superintendent (Hqrs.), Ajmer Collectorate on the afternoon of the 4th August, 1951.

**No. 23.**—Shri A. S. Berar, Superintendent of Central Excise assumed charge of the office of the Superintendent Headquarters, New Delhi, on the forenoon of the 13th August, 1951.

**No. 24.**—Shri G. N. Kale, an officiating Superintendent of Central Excise, relinquished charge of the office of the Superintendent of Central Excise, Gwalior, on the afternoon of 4th August, 1951.

**No. 25.**—Shri F. C. Pathak, an officiating Superintendent of Central Excise relinquished charge of the office of the Superintendent of Central Excise Delhi on the afternoon of the 4th August, 1951.

**No. 26.**—Shri F. C. Pathak, an officiating Superintendent of Central Excise took over charge of the office of Superintendent (P. & I.), New Delhi, on the afternoon of the 4th August 1951, vice Shri H. B. Dass transferred.

**No. 27.**—Shri H. B. Dass, an officiating Superintendent of Central Excise made over charge of the office of Superintendent (P. & I.), New Delhi, on the afternoon of 4th August, 1951.

**No. 28.**—Shri H. B. Dass, an officiating Superintendent of Central Excise took over charge of the office of the Superintendent of Central Excise Palampur on the afternoon of 10th August, 1951.

B. N. BANERJI,
*Collector.*

## NARCOTICS DEPARTMENT

NOTIFICATIONS

*New Delhi, the 28th August* 1951

**No. 5.**—Shri G. K. Mehrotra, District Opium Officer, Bara Banki is granted sixteen days earned leave with effect from 13th June, 1951.

**No. 6.**—Shri K. N. Anand, an officiating Superintendent of Central Excise is appointed to officiate as Opium Officer, Himachal Pradesh, Simla with effect from the forenoon of 15th June, 1951, until further orders.

A. C. WHITCHER,
*Narcotics Commissioner.*

## CENTRAL PUBLIC WORKS DEPARTMENT

NOTIFICATIONS

*New Delhi, the 6th September* 1951

**No. 04224-EIV.**—Mr. K. N. Bhar, officiating Assistant Engineer (Electrical) attached to the Air Conditioning Division, New Delhi, is granted earned leave for 27 days, with effect from the 10th September 1951, with permission to prefix Sunday the 9th instant and suffix Sunday the 7th October and the closed holidays from 8th October to 10th October on account of Dusehra to his leave.

**No. 06783-EI.**—Shri S. V. Sarma, Assistant Engineer, attached to Madras Central Division, Madras, was granted earned leave for 8 days with effect from the 14th to 21st July 1951.

*The 7th September* 1951

**No. Est.I/357.**—Mr. G. N. Chakravarty was appointed as Assistant Engineer on probation, in the Central Engineering Service Class II, in the Central Public Works Department, with effect from the forenoon of the 14th July, 1951.

**No. 07048-EI.**—Shri V. Kandaswamy, Officiating Executive Engineer, Diplomatic Enclave Division, Central P.W.D. New Delhi, has been granted earned leave for 20 days with effect from the 20th August, 1951, with permission to prefix Sunday, the 19th August, and suffix Sunday, the 9th September 1951 to his leave.

B. S. PURI,
*Chief Engineer.*

MEMORANDA

*New Delhi, the 3rd September* 1951

**No. 01762-E/CAW.**—Shri S. Roy Chowdhuri, Electrical Engineer, Aviation Electrical Division, Bombay, is granted earned leave for 11 days with effect from the date of his relief under Revised Leave Rules, 1933.

*The 5th September* 1951

**No. 01762-E/CAW.**—This Office Memo. No. 01762-E/CAW, dated 3rd September 1951, granting earned leave for 11 days to Shri S. Roy Chowdhuri, Electrical Engineer, Aviation Electrical Division, Bombay, is cancelled.

M. S. MATHUR,
*Chief Engineer (Avn.).*

## CENTRAL ENFORCEMENT DIRECTORATE

NOTIFICATION

*New Delhi, the 5th September* 1951

**No. 7(39)/49.**—Mr. R. L. Kaushik, Assistant Director, Enforcement, Ahmedabad was granted 12 days earned leave with effect from the 21st August, 1951 to 1st September 1951 with permission to suffix to the leave the holiday on the Sunday the 2nd September, 1951.

NARANJAN DASS,
*Director of Enforcement.*

## OVERSEAS COMMUNICATIONS SERVICE

NOTIFICATION

*Bombay, the 6th September* 1951

**No. GG.6/10.**—Mr. C. G. Slark, permanent Traffic Manager, Madras was granted earned leave for 27 days

with effect from the 9th July 1951 to the 4th August 1951 with permission to suffix Sunday the 5th August 1951 to the leave.

2. On return from leave, Mr. M. V. Joglekar resumed charge of his duties as Assistant Engineer (on probation) at Dhond with effect from the 22nd June 1951 (F.N.).

S. R. KANTEBET,
*General Manager.*

## OFFICE OF THE COMMISSIONER OF INCOME TAX

NOTIFICATIONS

*Delhi, the 5th September 1951*

**No. C-44(1)/15109.**—Mr. M. M. Prasad, I.T.O., B-II Ward, Delhi was granted earned leave for a period of 6 days with effect from the 11th July, 1951 with permission to affix Sunday, the 17th July, 1951 to the leave.

INDARJIT SINGH,
*Commissioner of Income-tax,*
*Delhi, Ajmer, Rajasthan and Madhya Bharat.*

*Lucknow, the 28th August 1951*

**C.No. 128-4/49.**—In exercise of the powers vested in me u/s 46(3) of the Indian Income-tax Act, 1922, (XI of 1922), I, Dalip Singh, Commissioner of Income-tax, Uttar Pradesh & Vindhya Pradesh, hereby direct that arrears of Income-tax revenue may be recovered by any process enforceable for the recovery of the Municipal Tax or local rate imposed in any part of the States of Uttar Pradesh and Vindhya Pradesh and to further direct under section 46(4) of the said Act that the powers and duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a Municipal Tax or local rate shall be exercised or performed by the Income-tax Officer of the area concerned.

DALIP SINGH,
*Commissioner of Income-tax,*
*U.P. & V.P. Lucknow.*

## CENTRAL WATER & POWER COMMISSION

NOTIFICATIONS

*New Delhi, the 4th September 1951*

**No. 490/11/51-Admn.**—Shri Nanda Gopal Majumdar is appointed a temporary Assistant Research Officer, Ganga Barrage Project Central Water and Power Commission with effect from 21st July 1951 (forenoon), with headquarters at Calcutta.

*The 6th September 1951*

**No. 493/3/51-Adm.**—After closing the Coorg Project Sub Division at Delhi, Shri A. M. Krishna relinquished charge of the office of Assistant Engineer, Coorg Project on the 16th August 1951 (forenoon) and took over charge as Assistant Engineer, Central Designs Organisation, Central Water and Power Commission, with effect from the same date and time.

V. S. ANNASWAMI,
*Secretary,*
for *Chairman, Central Water and Power Commission.*

## EAST INDIAN RAILWAY

NOTIFICATIONS

*Calcutta, the 3rd September 1951*

**No. ME. 130(N).**—Mr. P. C. Basu, on his relinquishing charge of the appointment of Officer on Special Duty (Workshops), Railway Board, has been permitted to avail of 3 months leave on average pay by the Railway Board with effect from 1st June 1951.

*The 7th September 1951*

**No. G/Staff/18.**—Mr. A. K. Gangulee, Assistant Signal Engineer (Lower Gazetted Service) was granted 25 days leave on average pay from the 7th April, 1951 to the 1st May 1951 (both days inclusive).

*The 8th September 1951*

**No. G/Staff/27.**—Shri S. N. Banerjee, Assistant Executive Engineer was granted leave on average pay for the following periods :—

(1) 11 days with effect from the 28th January '48 to the 7th February '48 (both days inclusive).

(2) 31 days with effect from the 10th March '49 to the 9th April '49 (both days inclusive).

(3) 37 days with effect from the 10th May '49 to the 15th June '49 (both days inclusive).

K. B. MATHUR,
*General Manager.*

## EASTERN PUNJAB RAILWAY

NOTIFICATIONS

*Delhi, the 25th August 1951*

**No. 87.**—The following Class II Officers of the Transportation (Traffic) and Commercial Department, Eastern Punjab Railway, are appointed to officiate in senior scale in the same Department on this Railway with effect from the dates as noted against each :—

Shri Raghuwansh Singh—3rd August 1951.

Shri Bodh Raj—1st August 1951 afternoon.

*The 28th August 1951*

**No. 88.**—Shri P. C. Nanda, a Subordinate of the Transportation (Power) and Mechanical Engineering Department, Eastern Punjab Railway, is appointed to officiate in Class II service in that Department, on this Railway with effect from 8th August, 1951.

*The 29th August 1951*

**No. 89.**—Shri L. P. Ahluwalia, a Subordinate of the Accounts Department, Eastern Punjab Railway, is appointed to officiate in Class II Service in that Department, on this Railway with effect from 9th July, 1951 afternoon.

**No. 90.**—Shri Ram Partap, a Subordinate of the Establishment Department, Eastern Punjab Railway, is appointed to officiate in Class II service as Assistant Personnel Officer, on this Railway with effect from 19th July, 1951.

*The 30th August 1951*

**No. 91.**—Shri B. D. Sondhi, a Subordinate of the Civil Engineering Department, Eastern Punjab Railway, is appointed to officiate in Class II service in that Department, on this Railway with effect from 18th August, 1951.

*The 3rd September 1951*

**No. 92.**—Shri Mota Singh, a Subordinate of the Civil Engineering Department, Eastern Punjab Railway, is appointed to officiate in Class II service in that Department, on this Railway with effect from 23rd August, 1951.

DAYA CHAND,
*Chief Administrative Officer.*

## G. I. P. RAILWAY

NOTIFICATION

*Bombay, the 4th September 1951*

**No. 21620-R/225.**—Mr. H. C. Sarin, Assistant Mechanical Engineer (Junior Scale) on probation was granted 46 days combined leave (*viz.* 10 days on average pay and 23 days on half average pay, and 13 days leave not due on half average pay) with effect from 27th May 1950 to cover a period of sickness.

Mr. R. D. Nadirshaw, Mechanical Engineer (Senior Scale) was granted 6 days leave on average pay with effect from 9th January 1951, to cover a period of sickness.

Mr. S. C. Vadera, Assistant Mechanical Engineer (Junior Scale) on probation was granted 27 days leave on average pay with effect from 16th April 1951.

Mr. V. H. Dabke, Assistant Executive Engineer (Junior Scale) was granted 6 days leave on average pay with effect from 31st May 1951 to cover a period of sickness.

Mr. D. P. Sharma, Assistant Traffic Manager (Junior Scale) on probation was granted 13 days leave on average pay with effect from 11th June 1951.

Mr. P. N. Khanna, Assistant Mechanical Engineer (Junior Scale) was granted 4 days leave on average pay with effect from 18th June 1951 to cover a period of sickness.

Mr. N. K. Warrior, Assistant Electrical Engineer (Class II) has been appointed to officiate as Superintendent (Telegraphs) (Senior Scale) with effect from 6th July 1951.

Mr. V. L. Kamat, Senior Traction Power Controller has been appointed to officiate as Assistant Transportation

Superintendent (Traction) (Class II) with effect from 5th July 1951.

Mr. N. N. Setty, Assistant Executive Engineer (Junior Scale) was granted 20 days leave on average pay with effect from 9th July 1951.

Mr. G. A. Carter, Assistant Transportation Superintendent (Telegraphs) (Class II) who was granted 2 months combined leave (*viz.* 24 days privilege leave, and the balance furlough on full pay) from 28th April 1951, was granted an extension of 25 days leave as furlough on full pay from 28th June 1951, and on return from leave, has been appointed to officiate as Assistant Transportation Superintendent (Telegraphs) (Senior Scale) with effect from 23rd July 1951.

Mr. K. V. Pandit, Assistant Traffic Manager (Junior Scale), on return from leave, has been appointed to officiate as Assistant Traffic Manager (Senior Scale) with effect from 23rd July 1951.

Mr. F. C. Bhandari, Assistant Traffic Manager (Junior Scale), was granted 11 days leave on average pay with effect from 23rd July 1951.

Mr. R. L. Mitra, Assistant Electrical Engineer (Junior Scale) on probation was granted 9 days leave on average pay with effect from 27th July 1951.

H. P. HIRA.
*General Manager.*

## ASSAM RAILWAY

### NOTIFICATION

*Pandu, the 4th September* 1951

**No. 202-E/22(O).**—Shri S. C. Uppal, Offg. Executive Engineer, Assam Railway, was granted an extension of leave on average pay for 26 days from 16th July 1951 to 10th August 1951, and leave on half average pay from 11th August 1951 to 14th August 1951.

B. ARORA,
*Chief Administrative Officer.*

## OUDH TIRHUT RAILWAY

### NOTIFICATION

*Gorakhpur, the 6th September* 1951

1. Shri P. N. Anand, made over charge of the post of Traffic Manager to Shri J. S. Mathur, on the 2nd August 1951, F.N.

2. Shri B. G. Roy, District Traffic Supdt., has been granted 8 months combined leave with effect from the 7th August 1951 A.N.

3. Shri K. N. Nair, Assistant Traffic Supdt., has been promoted as District Traffic Supdt., with effect from 8th August 1951 F.N.

4. Shri S. B. S. Varma on return from leave has been posted as Assistant Traffic Supdt., Izatnagar with effect from 1st August 1951 F.N.

1. Shri Sunder Lal, Assistant Accounts Officer has been promoted to officiate as Sr. Accounts Officer, (T.A.B.) with effect from 8th August 1951 F.N.

G. PANDE.
*General Manager.*

## SOUTHERN RAILWAY

### NOTIFICATIONS

*Madras, the 7th June* 1951

**No. E. 3507-C.**—Mr. R. Jagannathan, Officiating Superintendent (Grainshops) Senior Scale, (Temporary post) is posted to officiate as Anti-corruption Officer, Senior Scale, (Temporary post) with effect from the 4th June 1951.

Mr. O. B. Platel, Assistant Secretary to the General Manager, Class II service, now working as Anti Corruption Officer, (Temporary post) is posted as Assistant Superintendent (Watch and Ward), Class II service, with effect from the 4th June 1951.

*27th July* 1951

**No. Eg. 9/A.**—Mr. K. Venkata Krishniah Naidu, Officiating Assistant Transportation Superintendent (Traffic) Class II service, reverted as subordinate, with effect from the 4th July 1951 and is again promoted to officiate as Assistant Transportation Superintendent (Traffic) Class II service, with effect from the 20th July, 1951.

Mr. G. C. Venkateswara Iyer, Officiating Assistant Transportation/Superintendent (Traffic) Class II service, reverted as subordinate, with effect from the 16th July 1951.

*28th July* 1951

**No. ES. 2956.**—Mr. C. Srinivasa Rao, Assistant Engineer, Junior Scale, is granted leave on Average Pay for 10 days with effect from the 7th July 1951 with permission to prefix holiday on the 6th July 1951. He resumed duty on the 17th July 1951.

**No. ES. 3035.**—Mr. Md. Ayyub, Temporary Assistant Engineer, Junior Scale, resumed duty on the 14th May 1951 after availing Leave on Average Pay for 82 days with effect from the 13th February to 5th May 1951 and joining time for 8 days with effect from the 6th May to 13th May 1951. This is in supersession of the notification already issued.

*30th July* 1951

**No. E. 19-D/III.**—Mr. P. M. Natarajan, Assistant Transportation Superintendent (Traffic) Junior Scale, is promoted to officiate as Superintendent (Grainshops) Senior Scale, (Temporary post) with effect from the 4th June 1951.

*26th June* 1951

**No. E. 688/1/600.**—Mr. K. J. M. Jacob, Assistant Signal Engineer, junior scale, (on probation) resumed duty from leave with effect from the 9th July 1951, 8th July 1951 being Sunday.

Mr. S. Timmins, officiating Assistant Signal Engineer, Class II service, reverted as subordinate, with effect from the 8th July 1951.

*3rd July* 1951

**No. E. 931 A.IV.**—Mr. V. Harihara Iyer (Assistant Transportation Superintendent (Traffic) Junior scale, (Temporary) is confirmed in that appointment, with effect from the 6th January 1948.

*16th July* 1951

**No. E. 3528.**—Mr. V. Ganapathy, Probationer, Transportation Power and Mechanical Engineering department, G.I.P. Railway, on transfer to this Railway, reported for duty with effect from the 12th July 1951.

*18th July* 1951

**No. E. 3507-C-GM.**—Mr. P. V. Krishnaswamy Iyengar, Officiating Assistant Deputy General Manager (Complaints) Class II Service, Trichinopoly, took over charge as Assistant Secretary (Complaints) Class II Service, Southern Railway, Madras, with effect from the 2nd July 1951.

Mr. D. S. Aruldas, Assistant Personnel Officer, Junior Scale, Trichinopoly, took over charge as Assistant Personnel Officer, Head Quarters, Madras with effect from the 2nd July 1951.

*23rd July* 1951

**No. ES/F/172/6.**—Mr. M. V. Chalapati Rao, Assistant Engineer, Junior Scale (on probation) resumed duty from leave with effect from the 31st July 1951.

K. R. RAMANUJAM,
*General Manager.*

## PORT OF COCHIN

### ORDERS

*Cochin, the 1st September* 1951

**No. A2.4432/51.**—Mr. B. D. Erani, Dredging Superintendent, is granted leave on average pay for three months from 3rd September 1951 with permission to prefix Sunday, the 2nd September, 1951.

**No. A2-4366/51.**—Sri A. I. I. Ipe, Assistant Harbour Master, is granted earned leave for five days from 10th August 1951 with permission to affix the holiday on 15th August 1951 to the leave.

*The 4th September* 1951

**No. A2-4324/51.**—Shri M. G. Menon, Assistant Engineer (Mechanical), is granted earned leave for three days from 7th August 1951, to 9th August, 1951.

M. S. VENKATARAMAN,
*Administrative Officer.*

## BIHAR PUBLIC SERVICE COMMISSION

*ADDENDUM TO ADVERTISEMENT NO. 55 OF 1951*

*Patna, the 27th August 1951*

Candidates who have obtained Master's degree in either Applied Mathematics or Statistics or any other branch of Mathematics are also eligible to apply for the permanent post of Professor of Mathematics in class I of Bihar Educational Service. Application in prescribed form from such candidates who did not apply in response to advertisement No. 55 of 1951 will be received by the Secretary, Bihar Public Service Commission, 15 Bayloy Road, Patna on or before the 25th September 1951. Application forms are obtainable free on requisition.

R. K. CHAUDHURI,
*Secretary,*
*Bihar Public Service Commission.*

## UNION PUBLIC SERVICE COMMISSION

### Advertisement No. 36

Applications invited for undermentioned posts from Indian citizens and persons migrated from Pakistan with intention of permanently settling in India or subjects of Nepal, Sikkim or Portuguese or French possession in India. Upper age limit relaxable by 3 years for Scheduled Castes, tribal and aboriginal communities and displaced persons. No relaxation for others save in exceptional cases and in no case beyond three years. Particulars and application forms from Secretary, Union Public Service Commission, Post Box No. 186, New Delhi. Applications for forms must specify name of post. Closing date for applications with treasury receipt or crossed Indian Postal Order for Rs. 7/8/- (Re. 1/14/- for Scheduled Castes and tribes) 6*th October*, 1951, (20*th October*, 1951 for applicants abroad). Commission may remit genuinely indigent and *bona fide* displaced persons' fee. *Separate application with separate fee required for each post.* Candidates abroad may apply on plain paper if forms not available and deposit fees with local Indian Embassy. If required candidates must appear for personal interview.

1. *One permanent Lecturer in Botany, Government College, Ajmer. Pay.*—Rs. 200—15—290—20—410—25—560. Higher initial pay up to Rs. 275/- p.m. to specially well-qualified and experienced candidate. *Age.*—Below 40 years. *Relaxable for Government servants. Qualifications.—Essential.*—First Class Master's or equivalent honours degree in Botany of recognised University *OR* Second Class Master's or equivalent honours degree in Botany of recognised University with about 3 years' experience of teaching Botany preferably to degree and/or post-graduate classes.

2. *One Assistant Organic Chemist, Indian Agricultural Research Institute, New Delhi.* Permanent & pensionable. Other things being equal preference to Scheduled Castes candidate. *Pay.—Rs.* 275—25—500—E.B.—30—650—E.B.—30—800. Higher initial pay up to Rs. 350/- p.m. to specially well-qualified and experienced candidate. *Age.*—Below 35 years. *Relaxable for Government servants. Qualifications.—Essential.*—(i) M.Sc. or Higher Degree in Organic Chemistry. (ii) About 5 years' experience of research in Plant Chemistry or Synthetic Organic Chemistry.

3. *One permanent Paediatrician Maternal and Child Health Scheme Delhi.—Pay.*—Rs. 600—40—1000. Consulting practice allowed only in Paediatrics on 'Pay Clinic' system as soon as arrangements made for its establishments, subject to review on issue of general orders regarding grant of non-practising allowance. Higher initial pay up to Rs. 800/- p.m. to specially well-qualified and experienced candidate. *Age.*—Between 35 and 45 years. *Relaxable for Government servants. Qualifications.—Essential.*—(i) Medical graduate of recognised University with post-graduate qualification in Paediatrics. (ii) About 5 years' teaching experience in Paediatrics.

4. *One Economic Adviser, Ministry of Railway.* Temporary upto 31st March, 1952 but likely to be made permanent. *Pay.*—Rs. 1800/- fixed at present. When made permanent Rs. 1800—100—2000 also free passes as per rules. *Age.*—Below 50 years. *No age limit for Government servants. Qualifications—Essential*—(i) Master's degree in Economics of recognised University. (ii) Practical experience on economic problems relating to railways and adequate knowledge of actual conditions on Indian Railways including Railway Statistics and economics of operation. (iii) Actual working experience on railway problems. (iv) Fairly close acquaintance with accounting structure and procedure on Indian Railways.

5. *Five Assistant Inspectors of Explosives, Department of Explosives.* Temporary but likely to continue. One post reserved for Scheduled Castes candidate but if no such suitable candidate available, will be treated as unreserved. *Pay.*—Rs. 250—10—300—20—500. *Age.*—Between 26 and 32 years. *Relaxable for Government servants. Qualifications.—Essential.*—(i) Master's or equivalent Honours degree in Chemistry or Industrial or Applied Chemistry or Chemical Engineering of recognised University or Associateship or Fellowship of the Royal Institute of Chemistry, with about one year's experience in Chemical Works or in manufacture and/or handling of explosives, petroleum or other dangerous commodities, *OR* (ii) Degree in Engineering of recognised university, *OR* equivalent qualification with about 2 years' experience in Petroleum Installation. *OR* (iii) Diploma from Indian School of Mines and Applied Geology, Dhanbad with about one year's post-diploma practical experience in Mines.

6. *One Assistant Director (Co-ordination & Administration) Central Statistical Organisation, Cabinet Secretariat* Temporary up to 28th February, 1952 but likely to be made permanent. *Pay.*—Rs. 600—40—1000. *Age.*—Between 30 and 45 years. *Qualifications.—Essential.*—(i) First Class Master's or three years' Honours degree in Mathematics, Statistics or Economics. Master's or Honours degree with Mathematics & Economics or Statistics and Economics preferred. (ii) Thorough acquaintance with main sources of official statistics. (iii) Adequate experience in collection, interpretation and presentation of Statistical data with ability to direct Statistical and Economic research. (iv) Experience, general administrative and executive, in Government office.

7. *One Regional Commissioner for Scheduled Castes and Scheduled Tribes, Ministry of Home Affairs.* Temporary but likely to become permanent. Other things being equal, preference to Scheduled Castes and Scheduled Tribes. *Pay.*—Rs. 600—40—1000—1000—1050—1050—1100—1100—1150. *Age.*—Between 25 and 35 years. *Qualifications.—Essential.*—(i) Graduate of recognised University. (ii) Interest in welfare of Scheduled Castes and Scheduled Tribes and detachment from social prejudices as evidence by experience in this connection or of any other social or public work done.

P. K. KAPRE,
*Deputy Secretary,*